

NOLO[®]

"Offers those deep in debt a plan for digging themselves out."

ORLANDO SENTINEL

13th Edition

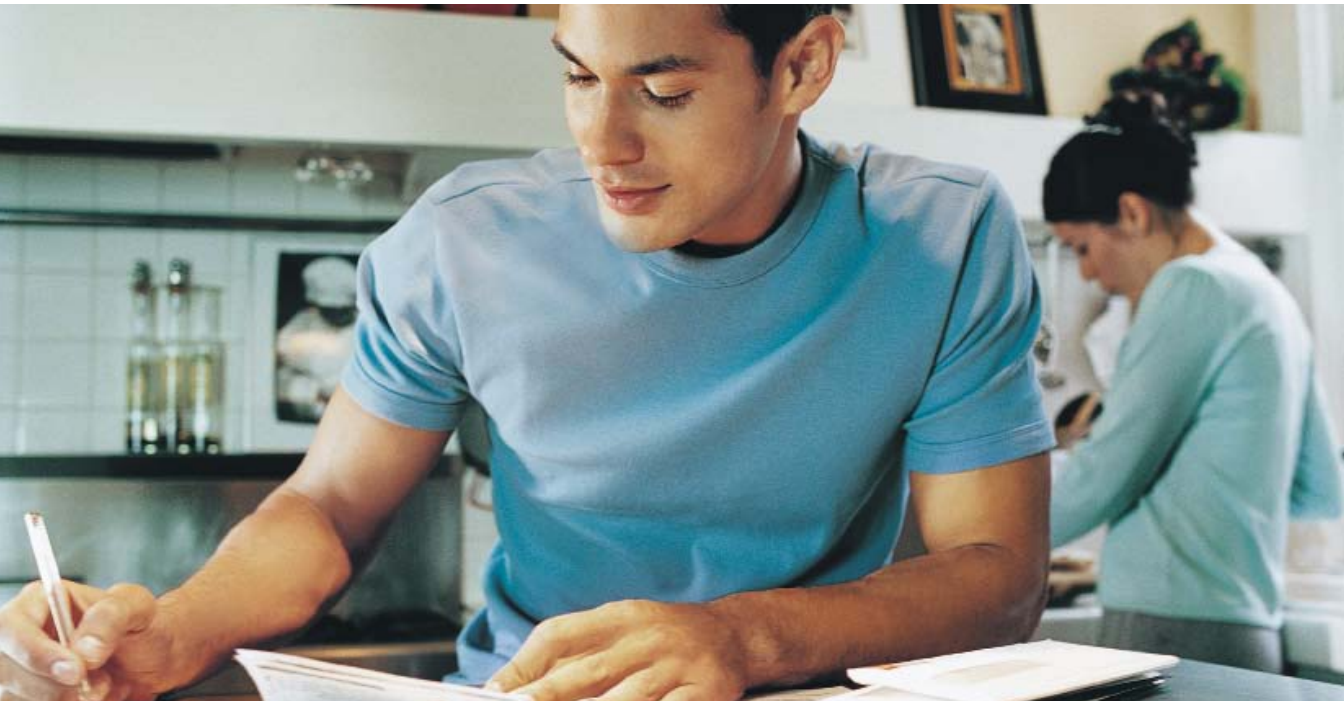
OVER
100,000
SOLD

Solve Your Money Troubles

Debt, Credit & Bankruptcy

Robin Leonard &
Attorney Margaret Reiter

- Stop illegal collection practices
- Create a realistic budget
- Get your finances under control
- Understand your bankruptcy options



Free Legal Updates at Nolo.com

The **NOLO**® Story



Emma Cofod

Dear friends,

Founded in 1971, and based in an old clock factory in Berkeley, California, [Nolo](#) has always strived to offer clear legal information and solutions. Today we are proud to offer a full range of plain-English law books, legal forms, software and an award-winning website.

Everything we publish is relentlessly researched and tested by a dedicated group of in-house legal editors, who together have more than 150 years' experience. And when legal changes occur after publication, we promptly post free [updates at Nolo.com](#).

Tens of millions of Americans have looked to Nolo to help solve their legal and business problems. We work every day to be worthy of this trust.

*Ralph Warner
Nolo co-founder*



Books & Software

Get in-depth information. Nolo publishes hundreds of great books and software programs for consumers and business owners. They're all available in print or as downloads at [Nolo.com](https://www.nolo.com).



Legal Encyclopedia

Free at Nolo.com. Here are more than 1,400 free articles and answers to common questions about everyday legal issues including wills, bankruptcy, small business formation, divorce, patents, employment and much more.



Plain-English Legal Dictionary

Free at Nolo.com. Stumped by jargon? Look it up in America's most up-to-date source for definitions of legal terms.



Online Legal Documents

Create documents at your computer. Go online to make a will or living trust, form an LLC or corporation or obtain a trademark or provisional patent at [Nolo.com](https://www.nolo.com). For simpler matters, download one of our hundreds of high-quality legal forms, including bills of sale, promissory notes, nondisclosure agreements and many more.



Lawyer Directory

Find an attorney at Nolo.com. Nolo's unique lawyer directory provides in-depth profiles of lawyers all over America. From fees and experience to legal philosophy, education and special expertise, you'll find all the information you need to pick a lawyer who's a good fit.



Free Legal Updates

Keep up to date. Check for free updates at [Nolo.com](https://www.nolo.com). Under "Products," find [this book](#) and click "Legal Updates." You can also sign up for our free [e-newsletters](https://www.nolo.com/newsletters/index.html) at [Nolo.com/newsletters/index.html](https://www.nolo.com/newsletters/index.html).



The Trusted Name

(but don't take our word for it)

"In Nolo you can trust."

THE NEW YORK TIMES

"Nolo is always there in a jam as the nation's premier publisher of do-it-yourself legal books."

NEWSWEEK

"Nolo publications... guide people simply through the how, when, where and why of the law."

THE WASHINGTON POST

"[Nolo's]... material is developed by experienced attorneys who have a knack for making complicated material accessible."

LIBRARY JOURNAL

"When it comes to self-help legal stuff, nobody does a better job than Nolo..."

USA TODAY

"The most prominent U.S. publisher of self-help legal aids."

TIME MAGAZINE

"Nolo is a pioneer in both consumer and business self-help books and software."

LOS ANGELES TIMES

13th edition

Solve Your Money Troubles

Debt, Credit & Bankruptcy

**Robin Leonard, J.D., &
Attorney Margaret Reiter**



Thirteenth Edition APRIL 2011
Editor KATHLEEN MICHON
Book Design TERRI HEARSH
Cover Design SUSAN PUTNEY
Proofreading ROBERT WELLS
Index THÉRÈSE SHERE
Printing DELTA PRINTING SOLUTIONS, INC.

Leonard, Robin.

Solve your money troubles: debt, credit & bankruptcy / By Robin Leonard & Margaret
Reiter.—13th ed.

p. cm.

Includes index.

Summary: "A comprehensive guide for those on the brink of financial crisis to manage
finances and get debt under control. The 13th edition includes information on the Credit
CARD Act and dealing with foreclosure"—Provided by publisher.

ISBN-13: 978-1-4133-1421-2 (pbk.)

ISBN-10: 1-4133-1421-X (pbk.)

ISBN-13: 978-1-4133-1423-6 (pdf e-book)

ISBN-13: 978-1-4133-1569-1 (epub e-book)

1. Debtor and creditor—United States—Popular works. 2. Credit—Law and legislation—
United States—Popular works. I. Reiter, Margaret. II. Title.

KF1501.L46 2011

346.7307'7—dc22

2010052779

Copyright © 1991, 1993, 1995, 1996, 1997, 2000, 2001, 2002, 2003, 2005, 2007, 2009, and
2011 by Nolo. All rights reserved. The NOLO trademark is registered in the U.S. Patent and
Trademark Office. Printed in the U.S.A.

No part of this publication may be reproduced, stored in a retrieval system, or transmitted
in any form or by any means, electronic, mechanical, photocopying, recording, or
otherwise without prior written permission. Reproduction prohibitions do not apply to the
forms contained in this product when reproduced for personal use. For information on
bulk purchases or corporate premium sales, please contact the Special Sales Department.
Call 800-955-4775 or write to Nolo, 950 Parker Street, Berkeley, California 94710.

Please note

We believe accurate, plain-English legal information should help you solve many
of your own legal problems. But this text is not a substitute for personalized
advice from a knowledgeable lawyer. If you want the help of a trained professional—
and we'll always point out situations in which we think that's a good idea—consult
an attorney licensed to practice in your state.

Table of Contents

	Your Legal Companion to Solving Your Money Troubles.....	1
1	How Much Do You Owe?.....	3
	How Much Do You Earn?.....	5
	How Much Do You Owe?	5
2	If You're Married, Divorced, or Separated	9
	Community Property States.....	11
	Common Law States	14
3	Debts You May Not Owe	19
	You Are the Victim of Misrepresentation or Other Fraud.....	20
	The Seller Breached a Warranty.....	26
	Your Car Is a Lemon.....	29
	Home Mortgage Contracts	31
	You Canceled a Contract.....	31
	You Received Goods You Didn't Order.....	36
	You Don't Want Goods on Layaway.....	37
	Canceling Automatic Deduction Payments.....	37
	You've Been "Slammed" by a Phone Company	39
	You've Been "Crammed" by a Phone Company	40
4	Prioritizing Your Debts	43
	Secured and Unsecured Debts	44
	High-Priority Debts	46
	Medium-Priority Debts.....	49
	Low-Priority Debts	50
	Review Your Worksheets	52

5	Negotiating With Your Creditors	53
	Communicate With Your Creditors	55
	Rent Payments	59
	Mortgage Payments	60
	Utility and Telephone Bills	62
	Car Payments	63
	Secured Loan Payments	65
	Insurance Payments	67
	Medical, Legal, and Other Service Bills	68
	Child Support and Alimony Payments	68
	Income Taxes	69
	Student Loan Payments	70
	Credit Card Payments	70
	Negotiating When the Creditor Has a Judgment Against You	73
	Pay Off a Debt for Less Than the Full Amount	73
	Don't Write Postdated Checks	77
	Beware of the IRS If You Settle a Debt	79
6	Finding Money to Pay Your Debts	81
	Increase Your Income	82
	Get Some of Your Tax Refund Early	82
	Sell a Major Asset	83
	Sell Smaller Items	84
	Cut Your Expenses	86
	Withdraw Money From a Tax-Deferred Account	89
	Apply for Government and Agency Help	90
	Consider a Home Equity Loan	93
	Use the Equity in Your Home If You Are 62 or Older	95
	Borrow the Money	99
	Get Your Tax Refund Fast	100
	What to Avoid When You Need Money	100
	Avoid Bank and Credit Union Prepaid Cards With Advances	104

7	What to Expect When You Can't Pay Your Debts	107
	Eviction	108
	Repossession	109
	Tying Up Property Before a Lawsuit	116
	Lawsuits	117
	Lawsuits Against Third Parties Who Hold Your Assets.....	118
	Liens on Your Property	118
	Jail.....	120
	Bank Setoff.....	120
	Intercepting Your Tax Refund	120
	Loss of Insurance Coverage.....	121
	Loss of Utility Service	122
8	Reducing Mortgage Payments and Dealing With Foreclosure.....	123
	Foreclosure.....	124
	Overview of Nonjudicial Foreclosure.....	125
	Judicial Foreclosures	126
	The Sale.....	126
	Defenses to Foreclosure.....	128
	Watch Out for Deficiency Balances	130
	Alternatives to Foreclosure.....	131
	Short-Term Informal Payment Plans.....	133
	Federal Programs for Homeowners Facing Possible Foreclosure.....	133
	Mortgage Workouts	140
	Refinancing	141
	Selling Your House.....	144
	Short Sales and Deeds in Lieu of Foreclosure	144
	Other Programs to Help Homeowners.....	147
9	Dealing With Debt Collectors.....	149
	Creditor or Collection Agency?.....	150
	Negotiating Secured Debts.....	152

Before Your Debt Is Sent to a Collection Agency.....	152
When Your Debt Is Sent to a Collection Agency	154
Illegal Debt Collection Practices.....	166
How to Fight Back If a Collection Agency Violates the Law.....	169

10 Choosing and Managing Credit Cards.....177

The Credit CARD Act	179
Credit Card Traps.....	186
Trouble Paying Your Bill.....	192
Using Credit Cards Wisely.....	193
Cards You Didn't Request.....	198
Rejected and Blocked Cards.....	199
Liability If Your Credit Card Is Lost or Stolen.....	200
Unauthorized Use of Your Card by an Acquaintance.....	202
To Dispute a Credit Card Bill.....	203
Debit Cards.....	208
Prepaid Debit Cards.....	210

11 Understanding Loan and Other Credit Documents.....211

Required Credit Disclosures	212
Terms of Credit Agreements.....	216

12 Student Loans.....229

What Kind of Loan Do You Have?.....	231
Figuring Out Who Holds Your Student Loan	233
Canceling Your Loan.....	234
Postponing Payments	237
Repaying Student Loans	238
Getting Out of Default.....	242
Filing for Bankruptcy When You Can't Pay.....	244
Consequences of Ignoring Student Loan Debt.....	245
Where to Go for Help	245

13	Child Support and Alimony	247
	How Child Support Is Determined	248
	Modifying the Amount of Child Support	250
	If Paternity Is Disputed	254
	Enforcement of Child Support Obligations	254
	Alimony	261
	Bankruptcy and Child Support or Alimony Debt	262
	Taxes, Child Support, and Alimony	262
14	If You Are Sued	265
	How a Lawsuit Begins	267
	Negotiate	271
	Alternative Dispute Resolution	275
	Respond in Court	277
	What to Expect While the Case Is in Court	287
	When the Creditor Gets a Judgment Against You	292
	Stopping Judgment Collection Efforts	298
15	Bankruptcy: The Ultimate Weapon	301
	Kinds of Bankruptcy	303
	Filing for Bankruptcy Stops Your Creditors	304
	Chapter 7 Bankruptcy	307
	Chapter 13 Bankruptcy	311
	Will Bankruptcy Solve Your Debt Problems?	312
16	Property Creditors Can't Take	317
	Property Subject to Collection	320
	Property Subject to the Bankruptcy Court's Authority	325
	Applying Exemptions	330
	Is Your Property Exempt?	334
	Turning Nonexempt Property Into Exempt Property	343

17	Rebuilding Your Credit.....	347
	Avoid Overspending.....	349
	Understand Credit Scores and Credit Reports	355
	Clean Up Your Credit Report	359
	Your Credit Score	371
	Build Credit in Your Own Name.....	374
	Ask Creditors to Consider Your Spouse's Credit History	375
	Use Existing or New Credit Cards	375
	Open Deposit Accounts.....	380
	Work With Local Merchants.....	381
	Obtain a Credit Union or Bank Loan.....	382
	Avoid Credit Repair Clinics	383
18	Illegal Credit Discrimination	393
	Basic Protections	394
	Sex Discrimination.....	395
	Marital Status Discrimination	395
	Sexual Orientation Discrimination.....	396
	Race Discrimination.....	396
	National Origin Discrimination.....	396
	Age Discrimination	397
	Postbankruptcy Discrimination	397
	Your Rights to Notice Regarding Credit Decisions	398
	If You Are Denied Credit or Offered Expensive Credit Terms.....	400
	Lawsuits Based on Credit Discrimination or Notice Violations.....	402
19	Help Beyond This Book.....	403
	Looking Up the Law.....	404
	Lawyers	411
	Debt and Credit Counseling Agencies.....	415
G	Glossary.....	421

Appendixes

A	Federal Agencies.....	425
	Where to Complain About Credit Discrimination	425
B	Contact Information for Useful Agencies, Organizations, and Other Entities	427
C	Federal and State Exemption Tables.....	431
D	Worksheets	499
	Worksheet 1: Monthly Income	500
	Worksheet 2: Your Debts.....	501
	Worksheet 3: Property Checklist.....	504
	Worksheet 4: Property Exemptions.....	508
	Worksheet 5: Daily Expenses	514
	Worksheet 6: Monthly Budget.....	516

Index.....	523
-------------------	------------

Sample Letters and Forms

Sample Letters Dealing With Fraud, Warranties, and Unordered Goods

Sample Letter Asking for Refund Because of Misrepresentation or Fraud	22
Sample Complaint Letter to Government Agency.....	24
Sample Letter to Stop Paying After Failure to Repair on Warranty	28
Sample Letter Confirming Availability of Unordered Goods.....	38

Sample Letters to Landlords

Sample Letter Confirming Agreement With Landlord.....	47
Sample Letter to Landlord	60

Sample Letters to Creditors or Debt Collectors (Negotiation or Debt Settlement)

Sample Letter to Creditors.....	57
Sample Letter to Creditor Confirming Agreement to Reduce Payments Temporarily	58
Sample Letter Offering to Give Back Secured Property in Exchange for a Written Agreement Waiving Deficiency.....	66
Sample Letter: Cashing Check Constitutes Payment in Full on Disputed Amount (Outside of California).....	74
Sample Letter: Cashing Check Constitutes Payment in Full on Disputed Amount—First Letter (California)	75
Sample Letter: Cashing Check Constitutes Payment in Full on Disputed Amount—Second Letter (California).....	76
Sample Letter: Cashing Check Constitutes a Release of All Claims When You Send Check for Less Than Full Amount Owed.....	77
Sample Letter to Creditor or Debt Collector to Make Lump Sum Payment If Negative Information Removed from Credit Report.....	164

Sample Letters Regarding Debt Collection

Sample Letter to Collection Agency Requesting Verification of Debt 159

Sample Letter to Collection Agency to Tell It to Cease Contacting You..... 160

Sample Letter to Creditor or Debt Collector to Make Lump Sum
Payment If Negative Information Removed from Credit Report..... 164

Sample Letter to Creditor About Debt Collector’s Improper Collection Tactics..... 170

Sample Letters to Credit Card Issuers

Sample Letter to Credit Card Issuer Canceling Card
(When You Have a Right to Cancel and Pay Over Time) 183

Sample Letter to Credit Card Issuer Canceling Card 185

Sample Letter Confirming Telephone Notice of Lost or Stolen Card..... 202

Sample Letter to Notify of Credit Card Billing Error 204

Sample Letter Raising Claim to Credit Card Bill 207

Sample Letter Asking for Basis of Unfavorable Credit Offer or Action..... 401

Sample Letters and Court Documents Dealing With Lawsuits

Sample Settlement Agreement or Release..... 273

Sample Letter to Creditor Requesting Mediation..... 277

Sample Answer (to Lawsuit)..... 285

Sample Proof of Service 288

Your Legal Companion to Solving Your Money Troubles

“The so-called debtor class ... are not dishonest because they are in debt.”

—Grover Cleveland

22nd & 24th president of the United States, 1837–1908

If you have debt problems, you are not alone. Millions of honest, hardworking people have trouble paying their debts. In recent years, these numbers have mushroomed. The 2008 recession spelled financial disaster for the many Americans that lost jobs and the health insurance that came with those jobs, or had work hours drastically reduced.

But there is good news. By knowing your legal rights and asserting them, you can get the bill collectors off your back and give yourself a fresh financial start. Often, it's easier than you think to affirmatively deal with your debt problems. Debtors who assert themselves may get more time to pay, have late fees dropped, settle debts for less than the full amount, and even reestablish credit.

Solve Your Money Troubles can help you take charge. This book:

Tells you how recent changes in the law can help you. *Solve Your Money Troubles* explains the new federal consumer regulations and laws, enacted in 2009-2010, that provide more protections and benefits to consumers. By knowing your rights under these new

laws, you can better prevent abusive credit practices and take advantage of consumer benefits.

Shows you how to protect your legal rights.

For example, *Solve Your Money Troubles* explains in detail how to respond to a lawsuit, wage attachment, car repossession, foreclosure proceeding, or property lien. It also explains the latest regulations and laws passed as a result of the severe recession that began in 2008, many of which will benefit consumers like you.

Helps you understand your debts. If you know how the law categorizes different kinds of debts, you'll know what kinds of collection efforts you can expect from different creditors and which negotiating strategies you can try with them.

Shows you effective alternatives to bankruptcy. Bankruptcy is the right tool for many people to deal with their debt problems, but it's not for everyone. *Solve Your Money Troubles* shows you the steps you can take to avoid bankruptcy when appropriate.

Gives you practical tips and information. *Solve Your Money Troubles* contains over 20 sample letters and statements that you can use to:

- get the bill collectors off your back
- ask a creditor for more time to pay, or
- ask a creditor to lower the amount of a bill.

Solve Your Money Troubles also refers you to places to lodge a complaint or ask for information, and contains charts of state laws summarizing consumer laws, debt collection laws, credit bureau regulations, and more.

Helps you evaluate your individual debt situation. *Solve Your Money Troubles* includes several worksheets to help you figure out

how much you earn, how much you owe, how much you spend, and what you own. With these worksheets, you can prioritize your debts, determine whether you are judgment proof, and decide what approach to take: Do nothing, negotiate with your creditors, get outside help negotiating, or possibly file for bankruptcy.



How Much Do You Owe?

How Much Do You Earn?	5
How Much Do You Owe?	5

“There can be no freedom or beauty about a home life that depends on borrowing and debt.”

—Henrik Ibsen, Norwegian poet
and dramatist, 1828–1906

To successfully plan your strategies with your creditors, you need to come to terms with your total amount of debt. This may make you shudder.

But happily, most credit counselors will tell you that people tend to overestimate their debt burdens.

To figure out your financial situation, you need to compare what you bring in each month with what you owe on your monthly expenses (such as food, housing, and utilities) and your other debts (for example, student loan payments).

Having a ballpark idea of the amount of your income and debt burden is not enough to tackle your debt problem. Getting precise numbers is a crucial part of the process—don’t skip it. In addition to laying out how much you earn and owe, this process will help you prioritize your debts, which will then help you decide which strategies to use to solve your money troubles.

To figure out how much you earn and how much you owe (both in monthly payments and overall), follow the instructions on the next pages and use the worksheets in Appendix D. If you are married or have jointly incurred most of your debts with someone, fill out the worksheets together.

Warning Signs of Debt Trouble

If you have panic attacks when you try to figure out your total debt burden, you’ll feel better if you skip this chapter and come back to it when you are better able to confront the information. Before doing that, however, ask yourself the following questions. If you answer “yes” to any one of them, you are probably in or headed for serious debt trouble:

- Are your credit cards charged to the maximum?
- Do you use one credit card to pay another?
- Are you making only minimum payments on your credit cards while continuing to incur charges?
- Do you skip paying certain bills each month?
- Have creditors closed any accounts on you?
- Have you taken out a debt consolidation loan? Are you considering doing so?
- Have you borrowed money or used your credit cards to pay for groceries, utilities, or other necessities (for reasons other than convenience or to get perks on a credit card)?
- Have you bounced any checks?
- Are collection agencies calling and writing you?

How Much Do You Earn?

Start by figuring out how much you earn each month. Grab a calculator, your pay stubs, and complete Worksheet 1 in Appendix D, by entering your monthly income from each listed source. If you are paid more often than monthly, see the instructions in Worksheet 1 to convert your pay to a monthly amount. If you have income that doesn't fit into one of these categories, list it as "other."

How Much Do You Owe?

In Worksheet 2 in Appendix D, you list your debts. Gather the documents that show payments on all your debts, the total amount owed on each debt, and any amount past due, including any interest or fees that have been added. Be as thorough and complete as possible. The completed Worksheet 2 will tell you exactly how much you should be paying each month (to be current on your debts) and how far behind you are. Here's how to fill it out.

Column 1: Debts and other monthly living expenses. In Column 1, enter the type of debt. Don't enter a debt more than once. So, for example, if you already deducted from your income in Worksheet 1 a debt that is paid out of your paycheck, such as child support, don't deduct that same debt again here.

If you are married, you may not be certain which debts are yours and which belong to your spouse. If your marriage is intact and you're having mutual financial

problems, approach your debt problems as a team. That is, enter all your debts in Column 1. If, however, you are separated or recently divorced, or are married but having financial problems of your own, see Chapter 2 for help on figuring out the debts for which you are obligated. If you generally share expenses and maintain a household with someone else, consider combining your income and paying all of your debts with joint funds, regardless of who actually incurred the debt. Enter both partners' debts in Column 1.

Column 2: Outstanding balance. In Column 2, enter the entire outstanding balance on the debt. For example, if you borrowed \$150,000 for a mortgage and still owe \$125,000, enter \$125,000. If you don't want to contact the creditor until you are ready to negotiate (and that will only be after you've determined how much you can pay), you have a few options. Your latest account statement might list the entire outstanding balance. If not, the creditor's automated telephone system or online account information might provide the information you need. If you can't get the balance and you prefer not to talk to the creditor, use your best guess for now.

Columns 3 and 4: Monthly payment and total you are behind. In Columns 3 and 4, enter the amount you currently owe on the debt. If the lender has not established set monthly payments—for example, for a doctor's bill—enter the entire amount of the debt in Column 4 and leave Column 3 blank. If the debt is one for which you make regular monthly payments—such as your car loan or mortgage—enter the amount of the monthly

payment in Column 3 and the full amount you are behind (monthly payment multiplied by the number of missed months, plus any fees or charges that have been added, like over-limit fees or late payment charges) in Column 4.

For credit card, department store, and similar debts, enter the monthly minimum payment in Column 3 and your entire balance in Column 4. But keep in mind that eventually you should make more than the minimum payment on your credit cards. (Chapter 10 discusses the danger of making only minimum payments each month.)

Column 5: Is the debt secured? In Column 5, indicate whether the debt is secured or unsecured. A secured debt is one for which a specific item of property (called “collateral”) guarantees payment. The most common type of secured debt occurs when you sign a credit agreement (sometimes called a security agreement) that allows the creditor to take a particular item of property under certain specified conditions—without suing you first. Examples of conditions that might allow the creditor to take your property include your failure to make a payment, your failure to maintain insurance on the property, or your failure to comply with the payment agreement in some other way. Typically you sign a credit agreement, giving the creditor a security interest in your property when you finance a car purchase; get a mortgage; get a second, third, or additional loan on your home; or buy an appliance or piece of furniture with store credit.

A creditor may also be able to secure its debt without your agreement by filing a lien

against your property. This can happen in two circumstances. First, the creditor can file a lien if the law specifically allows for it. An example is a mechanic’s lien—the law specifically states that a worker or material supplier may file a lien against your real property if you or the contractor fail to pay them. Second, a creditor can file a lien against your property if it has sued you and obtained a judgment against you. This is called a judgment lien.

Unsecured debts are typically bank credit card debt; bills owed for utilities, medical, or legal services; student loans; and spousal or child support.

Secured property is usually something very important, like your car or house. Because it can be taken quickly, without the delay of a lawsuit, secured debts are usually a high priority for you to pay.

Specify the collateral the creditor is entitled to grab if you default. (After you have read more about whether a debt is secured or not in Chapter 4, you can come back and review Column 5 to see if you need to make any changes.)

Column 6: What priority is the debt? Leave Column 6 blank until you read Chapter 4. It will help you prioritize the debts.

Add it up. When you’ve entered all your debts in the worksheet, total up Columns 2, 3, and 4. Column 2 represents the total balance of all your debts, even though some of it may not be due now; Column 3 represents the amount you are obligated to pay each month; and Column 4 shows the amount you would have to come up with to get current on all your debts.



RELATED TOPIC

Don't forget your other expenses.

None of us have monthly expenses consisting entirely of loan or credit payments. We also have to pay rent and buy groceries, pay for movies and restaurants, buy clothing and household goods,

and so on. These other expenses are covered in Chapter 17. Now might be a good time to review the information in Chapter 17's "Figure Out Where Your Money Goes." By listing your non-debt-payment expenditures, you will get a more complete picture of your finances.



If You're Married, Divorced, or Separated

Community Property States	11
Who Owes What Debts?.....	11
Who Owns What Property?.....	12
What Property Is Liable for Payment of Debts?	13
Separate Property	14
Community Property	14
Common Law States	14
Who Owes What Debts?.....	14
Who Owns What Property?.....	15
What Property Is Liable for Debts?.....	16

“It will be the duty of some, to prepare definitely for a separation.”

—Josiah Quincy, American lawyer,
1772–1864

Single people who have never been legally married owe their debts and own their property as individuals.

No fuss, no muss. Marriage, domestic partnership, or civil unions however, make things more complicated. If one of these relationships has been part of your life, this chapter helps you understand:

- what debts you owe individually
- what debts you owe jointly with your current or former spouse or partner
- what property you own individually
- what property you own jointly with your current or former spouse or partner, and
- when your property may be taken for each type of debt.

Each state has its own rules on marital property ownership, but the most important factor is whether you live in a community property state or a common law property

Domestic Partnerships and Civil Unions

In recent years, some states have extended many of the rights and obligations of marriage—including those that apply to debts and ownership of property—to couples who register as domestic partners or as civil union partners. These laws are often intended to give same-sex couples the option of being treated as a married couple for purposes of state law; opposite-sex couples may also qualify to register, in certain circumstances.

The states that currently offer either domestic partnerships or civil union registrations that provide rights virtually equivalent to marriage are California, New Jersey, Nevada, Oregon, and Washington State. If you have registered in one of these states, you and your partner are subject to your state’s rules for married couples, generally including community or common law property rules. Same-sex

couples are allowed to marry in Connecticut, Iowa, Massachusetts, New Hampshire, Vermont, and the District of Columbia. In these states, married same-sex couples are like all other married couples when it comes to property and debts. In August 2010, a federal district court ruled that California’s law against same-sex marriage was unconstitutional, but that decision is not in effect while it is on appeal. In Hawaii, Maine, Nevada, and Wisconsin, same-sex couples have some of the rights and obligations of married couples, but not all of them. If you live in one of those states and are worried you might be on the hook for your partner’s debts, consult a lawyer to learn about your state’s laws and how they apply to your situation.

For more information, see [A Legal Guide for Lesbian & Gay Couples](#), by Denis Clifford, Frederick Hertz, and Emily Daskow (Nolo).

one. This largely determines who owes and owns what in the course of a marriage.

Community Property States

The basic idea of community property is that in most situations a husband and wife act as a “community,” acquiring property and incurring debts as a unit.

Community Property States		
Alaska *	Louisiana	Texas
Arizona	Nevada	Washington
California	New Mexico	Wisconsin
Idaho		
* If spouses agree in writing		

Who Owes What Debts?

If you live in a community property state (listed above), which spouse owes which debts depends on when the debts were incurred and whether you are still married, separated, or divorced.

Debts Incurred While You're Single

All debts someone incurs before the marriage or after the marriage is dissolved are owed only by that person.

EXAMPLE: Ted owes \$3,000 to a computer company for a system he bought before he married Jill. Only Ted is responsible for that debt.

Debts Incurred During Marriage and Before Permanent Separation

Most debts incurred during the marriage and before a permanent separation are joint debts for which both spouses are liable. This is true even if only one spouse is a party to the debt—for example, because only that spouse signed the paperwork. There is an exception to this rule: If the creditor wasn't aware the spouse was married and was looking only to the spouse who incurred the debt for payment, only that spouse is liable for the debt.

EXAMPLE: On a credit application for a kayak purchase, Roger claims to be unmarried and does not include his spouse's income or job. Roger's spouse would not be liable to pay for the kayak if Roger defaults.

Typically, the couple's community property is liable only for debts incurred for the benefit of the community (the couple, not either one of them individually), but this is not always true. For example, if a spouse owes a separate income tax debt or has an obligation to pay child or spousal support from a prior relationship, community property can be taken to pay these debts. The nonobligated spouse may be entitled to reimbursement of his or her share of community assets used to pay these kinds of debts.

Debts Incurred During Marriage but After Permanent Separation

For debts incurred during the marriage but after the spouses have permanently

separated, the following rules apply: If the debt was incurred for necessities of life for either spouse or their children, then both spouses are responsible for paying it. If both parties agree to a purchase, or the purchase is necessary to maintain a jointly owned asset (for example, to repair a leaky roof in the home they own together), then both are liable. If one spouse incurs a debt for that spouse's benefit only (a vacation, for example), only that spouse owes the debt.

EXAMPLE 1: After permanently separating from her husband, Paula uses her credit line at Home Depot to fix the roof of the family home that they own together. Because everyone in the family benefits from the repaired roof, Paula's husband would also be liable for repayment of the debt.

EXAMPLE 2: Justine, a married woman, uses her separate credit card to charge a trip to the Bahamas that she is taking with her lover. Ira, the spouse who stayed at home, would not be liable for the debt because it does not benefit him and the creditor was not expecting to look to his assets for repayment.

Who Owns What Property?

If you live in a community property state, property is owned jointly or separately, depending on:

- when you got the property
- whether you were married, separated, or divorced at the time you got it

- how you got the property—for example, whether it was a gift or inheritance, purchased with separate property, or purchased with joint property
- how you hold title to the property—for example, if title to your house is in both your and your spouse's names, it is community property (if separate property is used to pay down the mortgage or make repairs, however, a mixture of community and separate property results)
- whether you and your spouse entered into a written premarital agreement that changes the property law rules that would otherwise apply
- whether you or your spouse “transmuted” (changed) the character of the property in a written agreement; and,
- whether community or separate funds were used to acquire the property and whether the two funds were “commingled” (mixed together). When the form of ownership is not stated in writing and the asset was purchased with commingled funds, then the asset is considered to be entirely community property unless one of you can clearly trace and identify your separate contribution.

Property Acquired Before Marriage or After Divorce

All property owned by a spouse prior to marriage or acquired after the marriage is dissolved by a final court judgment is that spouse's separate property, unless its nature is “transmuted” in writing or community

funds are used to finance or improve the property, in which case it may become partly community.

EXAMPLE: Gillian, a single woman, owns stock worth \$10,000. She marries Otis; they stay married for four years and then separate and later divorce. At that time the stock has appreciated in value to \$25,000. Because Gillian came into the marriage with the stock and held it in her name alone, it is all her separate property.

Property Acquired During Marriage and Before Permanent Separation

All property acquired by one or both spouses during the marriage and before a permanent separation is community property, unless either of the following is true:

- The spouse acquired the property as a gift or inheritance.
- The property was paid for with funds that were the separate property of one spouse, and only that spouse's name appears on the account, deed, title, or ownership papers.

EXAMPLE 1: Andy and Portia get married while they are still in school. Andy graduates and starts a business that generates a large income. Both the business and the income are community property, because they were acquired during the marriage.

EXAMPLE 2: Joan and David marry in a community property state. Shortly

afterward, Joan learns that she has inherited \$50,000 from her grandmother. This is Joan's separate property.

EXAMPLE 3: David's brother gives him an expensive bass-fishing boat. This is a gift, so it is David's separate property even though he's married when he acquires it.

EXAMPLE 4: When he gets married, Rudy already owns a valuable coin collection. A couple years later, Rudy sells the collection and buys the equipment necessary to start a radio station. The equipment is Rudy's separate property because it was purchased with money from the sale of his separate property assets.

Property Acquired After Permanent Separation

All property acquired by a spouse during the marriage but after a permanent separation is separate property.

EXAMPLE: Gillian buys a summer cabin in Idaho after she and Otis permanently separate. This is Gillian's separate property. If Otis and Gillian divorce and then get back together, the cabin would still be Gillian's separate property.

What Property Is Liable for Payment of Debts?

If you live in a community property state, which property is liable for payment of which debts depends on two factors: whether the property is separate or community property,

and whether the debt is an individual debt of one spouse or a joint debt of both spouses.

Separate Property

The separate property of a spouse is liable for that spouse's individual debts (debts incurred solely for his or her benefit). The separate property of one spouse is also liable for all joint debts. However, it is not liable for the other spouse's individual debts (debts incurred solely for his or her benefit).

EXAMPLE 1: Bill and Hillary are married and live in a community property state. Each came into the marriage with a sizable inherited trust fund. Each trust fund is separate property of the spouse who owns it, because the trust funds were acquired prior to the marriage. Bill's trust fund is liable for his premarital debts, and Hillary's trust estate is liable for her premarital debts. But neither trust is liable for the other spouse's premarital debts.

EXAMPLE 2: Shortly after they are married, Bill and Hillary buy a business. The business fails and they become delinquent on the note. The holder of the note can go after both trusts, even though they are separate property, because the debt was jointly incurred.

Community Property

Community property is liable for all joint debts (debts incurred for the benefit of the community). In addition, one spouse's share

of community property is liable for that spouse's separate debts.

EXAMPLE 1: Gus and Susie marry in a community property state and buy a home. Because they bought the home during the marriage, it is community property. Without telling Susie, and using his separate credit history, Gus signs a promissory note for \$100,000 to buy a new Maserati, which he parks at his office. Several months later, Gus can't make the payments, and the holder of the note comes calling. The creditor can go after Gus's separate property and can also assert a claim against half of the home's value, which is Gus's share of the community property.

EXAMPLE 2: Gus and Susie had permanently separated when Gus bought the Maserati. This would make no difference, because Gus's share of the community property home is still liable for Gus's separate debts.

Common Law States

In common law property states (all states except the community property ones listed above), the basic assumption is that property acquired by the spouses together and held in both names is marital property, while all other property is separate.

Who Owes What Debts?

If you live in a common law property state, who owes what debts depends on when the

debt was incurred and, in some instances, what the debt was for.

Debts Incurred Before Marriage or After Divorce

All debts incurred by a spouse before the marriage begins or after it has ended are that spouse's individual debts.

EXAMPLE: Ted owes \$8,000 on a professional video system he purchased before he married Jill. The \$8,000 is Ted's separate debt, and only he is responsible for it.

Debts Incurred During Marriage

All debts incurred by the spouses jointly during the marriage are joint debts. All debts incurred by one spouse during the marriage and before permanent separation are separately owed by that spouse unless any of the following is true:

- The creditor looked to both spouses for repayment or considered both spouses' credit information.
- The debt was incurred for family necessities, such as food, clothing, or shelter.
- The debt was incurred for medical purposes (in some, but not all, of common law states).

EXAMPLE 1: On a credit application for the purchase of a kayak, Tammy claims to be unmarried and does not include her spouse's income or job. Tammy's spouse, Chris, would not be liable to pay for the kayak if Tammy defaults.

EXAMPLE 2: Paula uses her personal credit card to pay for her husband, Ray's, emergency room visit. In about half the states, this would be a joint debt; in the other half, only Paula would be liable for the debt.

Debts Incurred After Permanent Separation

An individual is liable for his or her own debts incurred during the marriage but after permanent separation, unless the debt was incurred for family necessities.

EXAMPLE: After Dewevai and Angie permanently separate, Angie borrows \$1,000 to pay their child's school tuition. Because this is a family necessity, both Dewevai and Angie are liable for the debt.

Who Owns What Property?

If you live in a common law state, how property is owned before, during, and after marriage is governed by when the property was acquired, whether the property was paid for with joint or separate funds, and how title is held.

Property Acquired Before Marriage or After Divorce

All property one spouse owned before marriage, acquired during marriage by gift or inheritance, or acquired after divorce is that spouse's separate property.

EXAMPLE: When Joan and Fred got married, Joan owned five valuable paintings, and Fred owned an expensive bass fishing boat. The paintings are Joan's separate property, and the boat is Fred's separate property.

A spouse's separate property remains separate unless it's "commingled" (mixed together) with marital property or the other spouse's separate property. If this happens, that separate property might become partly marital property, completely marital property, or even the other spouse's separate property, all depending on what can be proved by tracing back where the property came from and how it become commingled.

Property Acquired During Marriage

Because state laws differ, you will need to consult an attorney or do some legal research to learn about the marital property laws of your state (see Chapter 19). Generally speaking, in the District of Columbia and a large majority of states, property and earnings accumulated during marriage are marital (joint) property and are subject to division and equitable distribution in a divorce proceeding.

In some common law states, the rules for property ownership during marriage, whether or not the spouses are permanently separated, are as follows:

- All property acquired by a spouse during marriage that has a title document in that spouse's name only (such as a deed or investment account) is that spouse's individual property.

EXAMPLE: After Maria and Russ marry, they buy a house and put the house in Russ's name only. The house is Russ's separate property.

- All nontitled property acquired by a spouse during marriage with that spouse's separate funds is that spouse's separate property.

EXAMPLE: Cherish, who is married to Scott, uses her personal savings account to buy a computer. Cherish owns the computer as her separate property.

- All property acquired by the spouses jointly, or acquired by one spouse from joint funds, is joint property (unless title is taken in the name of one spouse only).

EXAMPLE: Cherish and Scott use their joint savings account to buy matching kitchen appliances. Appliances don't come with title documents, so Cherish and Scott own them jointly.

What Property Is Liable for Debts?

If you live in a common law state, which spousal property is liable for which debts depends on whether the property is separately or jointly owned; whether separately owned property was used to pay for necessities; and, in some states, whether joint property is titled "tenancy by the entirety."

Separate Property

A spouse's separate property is liable for that spouse's separate debts and for the couple's joint debts. It is also liable for the other spouse's separate debts if they were incurred for necessities.

EXAMPLE 1: Ralph and Toni, a married couple, live in a home that Ralph owns in his name only. A bank sues Toni for payment of a \$5,000 loan that she took out to pay for a vacation to Italy. Because this is Toni's separate debt and the house is Ralph's separate property, the bank may not use the equity in the house to collect Toni's separate debt.

EXAMPLE 2: Instead of a vacation, Toni uses the loan to repair the roof on the house. Because the debt is for a necessity benefiting Ralph as well as Toni, Ralph's separate property, including the house, is liable for the debt.

Joint Property

With one major exception, a couple's jointly owned property is liable for the separate debts of each spouse as well as for their joint debts. The exception is this: In a number of common law states, a married couple can hold property jointly in the form of "tenancy by the entirety." In many of these states, the creditor of either spouse cannot reach property held as "tenancy by the entirety" unless the debt is a joint debt.

EXAMPLE 1: Kai and Irina, a married couple, own a home in Wyoming in both their names as "tenants by the entirety." Kai runs up a large balance on his personal credit card. Even though the home is jointly owned, the credit card company has no recourse against it because of the way title is held.

EXAMPLE 2: Same case, but the home is held in both names as joint tenants. Here, Kai's creditor could proceed against the home as jointly owned property.



Debts You May Not Owe

You Are the Victim of Misrepresentation or Other Fraud	20
The Seller Breached a Warranty	26
Your Car Is a Lemon	29
Home Mortgage Contracts	31
You Canceled a Contract	31
Door-to-Door Sales Contracts	32
Home Equity Loan Contracts	33
Contracts for Credit Repair Services	33
Contracts You Can Cancel Under State Law	33
Other Grounds to Cancel a Contract	34
You Received Goods You Didn't Order	36
You Don't Want Goods on Layaway	37
Canceling Automatic Deduction Payments	37
You've Been "Slammed" by a Phone Company	39
You've Been "Crammed" by a Phone Company	40
How Does Cramming Occur?	40
What Do Cramming Charges Look Like?	40
If You Have Been Crammed	40

“The buyer needs a hundred eyes, the seller not one.”

—George Herbert, English poet,
1593–1633

You may not really owe as much as your creditors claim you do. If the seller violated a law or sold you a defective product, you may be able to get a bill reduced or canceled. And knowing your rights can be a powerful negotiating tool. If you bought the disputed item using a credit card, your chance of resolving the dispute increases. So be sure to review the potent rights and procedures for dealing with credit card purchase disputes explained in Chapter 10.



TIP

Review this chapter, even if you don’t dispute any debts. Most consumers are not aware of the many rights they may have to return items or cancel a contract or fee, so you may want to have a quick look here, even if you don’t think you have any problems with items or services you have purchased.

You Are the Victim of Misrepresentation or Other Fraud

You don’t owe a debt if it was obtained by misrepresentation or fraud. Each state and the federal government prohibit businesses from deceiving, misleading, or cheating consumers or engaging in other

unfair business practices. Laws banning this behavior are sometimes referred to as unfair and deceptive acts and practices (collectively called “UDAP”) laws. They apply to most, but not all, private sellers. Many other state and federal laws also protect consumers. Often those laws apply to a particular type of business, such as health clubs, or a particular business practice, such as warranties. But if there is no specific law on a topic (and in some cases, even if there is), the general consumer protection (UDAP) laws may help you. Examples of practices that UDAP laws prohibit include:

- using form contracts that hide unfair terms in pages of complicated legal jargon
- making oral or written representations that are false or mislead you about what you are receiving or how much it really will cost you, and
- falsely claiming a product is repaired or is not defective when it still doesn’t work right.

Sometimes the fraud is so sneaky that you don’t even know that you have been victimized until it is way too late to do much about it. Some signs that a transaction may have been fraudulent include:

- rushing you through signing paperwork, telling you to sign here, sign there, and not letting you take the paperwork to read over without the salesperson present, before you sign
- emphasizing small initial payments or a favorable interest rate, but hiding or not letting you focus on the total costs involved, or on what triggers a change in interest rate or payment amount

- deemphasizing disclosures as just some nonsense the government requires
- giving an explanation you can't understand
- continuing to talk for hours, until your resistance wears down
- not directly answering simple questions like, "What is the total cost?"
- claiming to be working on your behalf or pretending or claiming to be an expert, and
- taking advantage of vulnerable groups, such as children, people who don't speak English fluently or who have limited education, people with physical or mental disabilities, or seniors. Of course, the best known sign of fraud is making an offer that seems too good to be true.

In some cases, these laws let you cancel a contract, stop paying, or get your money back. If you didn't pay and have already been sued by a creditor or collection agency, you can raise UDAP violations (or violations of other consumer protection laws) as a defense to the lawsuit.

You can also sue the seller. But first, send a demand letter to the seller explaining the problem and asking for your money back. See below for a sample. Be sure to keep a copy of the letter, and don't send originals of any supporting documents, such as a contract, receipt, or canceled checks. If the seller doesn't respond or give you what you want, your letter and supporting documents (and any response) will be evidence you can use to sue in small claims court if the amount is relatively small, usually a few hundred to a few thousand dollars. Check your state's laws

for the amount. (See Chapter 19 for how to find your state's laws.) In a regular trial court, you'll likely need to hire a lawyer to help you sue. If you decide to go it alone, you'll need to find out more about the requirements of the UDAP laws in your state.

Complain in Writing

If you think you have been the victim of consumer fraud, your first step is to complain to the company. If you have a right to cancel within a few days and haven't been able to get the complaint resolved within that time period (see below), don't let the deadline pass without canceling.

It's seldom effective to merely call the salesperson, who may be interested in keeping the company from knowing you are complaining. Send or confirm your complaint in writing to the chief executive officer of the company (check online or at the library for that person's name and address). If more than one company is involved, complain to each. Don't rant. Just set forth the facts briefly and clearly, along with what you want done. (See a sample letter below.)

If you don't get results, turn your ordinary complaint into an "escalated complaint" by complaining to a government agency. Most companies pay more attention and handle complaints at a higher level in the company if you do so. The person the company assigns to review escalated complaints is more likely to have authority to negotiate with you or give you your money back.

Sample Letter Asking for Refund Because of Misrepresentation or Fraud

July 19, 20xx

Mr. Robert O. Ownes, President
Federal Mint
500 Charles Street
Washington, DC 50706
Re: TV offer for Obama Coins

Dear Mr. Ownes:

I saw your TV ads for the gold Obama dollar coins from the Federal Mint.

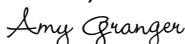
They described the coins as a limited edition, a \$20 value, available for \$9.99, plus shipping and handling, which turned out to be another \$4.99. I bought five coins on about March 5, 20xx, one for each of my grandchildren when they turn 21. After seeing your ad, I thought they were real Obama coins minted by the U.S. government.

I recently took them to a coin dealer because I noticed they were starting to peel. The coin dealer has been in business here for more than 30 years. He told me that the Obama picture was just added to an ordinary \$1 coin. He said the “Obama” coins were not minted by the U.S. government, that there is no such government agency as the “Federal Mint,” and that the “gold” really is a thin skin of gold-colored paint. I then went on the Web and found that millions of these “coins” have been sold—hardly a limited edition. The coin dealer said he wouldn’t buy coins like that and could not tell me anyone who would. He said they aren’t worth any more than the \$1 coin that is underneath the gold paint and Obama picture.

I believe your ad was misleading. I would not have bought the coins if I knew the truth about them. Please refund my money, a total of \$74.90, within 10 days from the date of this letter. Enclosed is a copy of my receipt for that amount. I have the coins available for pick up or will return them at your expense, wherever you tell me to send them.

You can contact me at the address listed below.

Sincerely,



Amy Granger

500 Fort Point
San Francisco, CA 94105

Encl.

Whether you decide to sue the seller or not, it's always a good idea to report the problem to the appropriate government agency. If agencies receive enough complaints about a particular business or problem, they are more likely to take action. That could prevent the company from ripping off other people, even though it won't necessarily result in the return of your money. (If you don't know which agency to send a complaint to, your local or state prosecutors may be able to direct your complaint to the appropriate agency. See below.)

Don't just send the government agency a copy of the letter you sent to the company. Often government agencies don't act if all they get is a "cc," preferring to wait to see if you resolve the matter with the company first. But many government agencies routinely contact the company about any complaint filed directly with them, and they will ask for a response. Use the agency's standard form for a complaint if it has one. Be sure to attach copies (never the originals) of all receipts, contracts, warranties, service contracts, advertisements, and other documents relating to your purchase. Include any log you might have kept of your efforts to resolve the problem, phone records showing your calls to the company, and a copy of any correspondence with the company. Keep a copy of your letter and attachments for your records. (See below for a sample complaint to a government agency.)

To be sure the company knows you have complained to a government agency, send the company a copy of the complaint you file with the government agency.

Some agencies to complain to include:

- **State and local prosecutors.** You may find your local or state prosecuting offices more responsive than federal agencies (local prosecutors recognize you as a voter, not just a consumer). Contact the government prosecuting attorney (often called a district attorney) in the county where you live. Contact the Attorney General's office in your state. You can find contact info for these and other state and local consumer protection agencies at www.consumeraction.gov (click on "Where to File a Complaint" and "State Offices"). Then check the agency's website or call the agency and ask how and where to file a consumer complaint.
- **State licensing boards.** These boards cover licensed professionals like contractors, lawyers, doctors, mechanics, and funeral directors. Contact your state's funeral home licensing board if, for example, you ordered a \$500 pine coffin for a family member's funeral, but got stuck with a \$3,000 walnut model instead. To find addresses and phone numbers, check your state government's website, call directory assistance for your state capital, or ask the local prosecutor's office.
- **Federal Trade Commission.** The FTC oversees federal consumer product warranty law, as well as advertisers, door-to-door sellers, mail-order companies, credit bureaus, nonbank lenders, and most retailers. Contact information is in Appendix A. If you aren't sure which federal agency to contact, this is a good place to start.

Sample Complaint Letter to Government Agency

August 19, 20xx

Public Inquiry Unit
California Attorney General
1300 I Street
San Francisco, CA 90702

Re: TV offer for Obama Coins

Dear Sir or Madam:

I saw TV ads for gold Obama dollar coins from the Federal Mint. These ads have been running on Station KXZY at least since December 2009 and continue to run.

They described the coins as a limited edition, a \$20 value, available for \$9.99, plus shipping and handling, which turned out to be another \$4.99. I bought five coins, on about March 5, 20xx, one for each of my grandchildren when they turn 21. After seeing the ads, I thought they were real Obama coins minted by the U.S. government.

I recently took them to a coin dealer because I noticed they were starting to peel. The coin dealer has been in business here for more than 30 years. He told me that the Obama picture was just added to an ordinary \$1 coin. He said the "Obama" coins were not minted by the U.S. government, that there is no such government agency as the "Federal Mint," and that the "gold" really is a thin skin of gold-colored paint. I then went on the Web and found that millions of these "coins" have been sold—hardly a limited edition. The coin dealer said he wouldn't buy coins like that and could not tell me anyone who would. He said they aren't worth any more than the \$1 coin that is underneath the gold paint and Obama picture.

I believe the ads were misleading. I would not have bought the coins if I knew the truth about them. I wrote to the company on about July 19, 20xx and asked for a refund of the \$74.90 I paid. I offered to have the coins available for pick up or to return them at the company's expense. I received no response. Enclosed is a copy of my letter to the company and my receipt. If you want to see how the coins are peeling, I can make them available for you to examine.

I believe I should get a full refund. Please contact me if you have any questions. You can contact me at the address listed below.

Sincerely,

Amy Granger
Amy Granger

500 Fort Point
San Francisco, CA 94105

cc: Mr. Robert O. Ownes, President, Federal Mint

- **Consumer Financial Protection Bureau.**

Beginning July 21, 2011, this new federal agency, the CFPB, will take over regulatory authority for many financial entities currently regulated by other federal agencies. It will also have new powers to protect consumers in consumer financial transactions. It will have authority over the largest banks and credit unions (with \$10 billion or more in assets); the home mortgage industry, including lenders, servicers, and brokers; private student loan lenders; payday lenders; and other large lenders on consumer products or services. If you used a loan, a charge or credit card, or other type of credit to buy the product or service on which you have a dispute, be sure to contact this new agency to learn what assistance it may be able to provide.

- **Federal lending institution regulators.**

Several different regulators will still regulate financial institutions even after the CFPB is up and running. If you aren't sure which one regulates the lender or credit card company about which you have a complaint, send your complaint to any you think may have a role, and explain that you wrote to them because you weren't sure which one to contact. See Appendix A for a listing of federal lending regulators.

- **Consumer Product Safety Commission.** Let them know about hazardous consumer products. Contact CPSC at 800-638-2772 (301-595-7054 (TTY)); www.cpsc.gov.

- **Federal Communications Commission.** If you were defrauded by a telephone com-

pany, cable company, or a telemarketer, or sucked in when a communication company aired a fraudulent advertisement on radio or television, tell the FCC at 888-225-5322; 888-835-5322 (TTY); www.fcc.gov. States also have utility commissions or agencies that take complaints about utilities, such as telephone, water, gas, electric, and moving companies.

- **Department of Transportation.** If you were cheated by an airline, contact the Aviation Consumer Protection Division, U.S. Department of Transportation, at 202-366-2220; 202-366-0511 (TTY); <http://airconsumer.ost.dot.gov>.

- **U.S. Postal Service.** If you were cheated by a mail-order company or any other seller who used the U.S. mail—including a magazine advertiser—you can fill out a complaint form online with the U.S. Postal Inspectors at <http://postalinspectors.uspis.gov> or call 877-876-2455. You can also mail your complaint to your local postal inspector (check the government listings of your telephone white pages for the address), or to Criminal Investigations Service Center, Attn: Mail Fraud, 222 S. Riverside Plaza, Suite 1250, Chicago, IL 60606-6100.

- **National Consumers League—telemarketing and online fraud.** The nonprofit National Consumer League's Fraud Center can also help you if you feel you've been defrauded by a telemarketer or online. It sends copies of your complaint to local, state, and federal law enforcement agencies. You

can find the online complaint form at www.fraud.org, call 202-835-3323, or write to NCL, 1701 K Street, NW, Suite 1200, Washington, DC 20006.

- **Your state and federal legislators.** Legislators often are very sensitive to the welfare of their constituents and may send a letter on your behalf if your efforts have been unsuccessful. After all, it's their job to see that the laws and the agencies work well to prevent and stop fraud. To find your representatives at the state and federal level, go to www.votesmart.org and enter your zip code.
- **The media.** Finally, contact your local newspaper, radio station, or television station "action line." Especially in metropolitan areas, these folks often have an army of volunteers ready to try to right consumer complaints.



RESOURCE

If sending the company a complaint letter or filing a complaint with the appropriate government agency doesn't get results in a reasonable amount of time, you may decide you need to sue. If you want to sue, a good resource is *Unfair and Deceptive Acts and Practices* (NCLC). To order it, contact the National Consumer Law Center at 617-542-9595 or www.consumerlaw.org. Chapter 19 of this book also provides basic information on how to find state laws or an attorney to help you.

The Seller Breached a Warranty

If a seller violated a warranty—an implied or express promise about an item—you may be

entitled to have the item repaired, replaced, or, in some circumstances, to return the item and not pay for it. There are three basic types of warranties:

- An *express warranty* is a seller's promise or factual statement about an item that the buyer relies on when deciding to purchase it. The seller's statement can be written, oral, or in an ad. For example, furniture might come with the statement "We guarantee all furniture against defects in construction for one year." Or a store sign might promise that "All dresses are 100% silk."
- An *implied warranty for ordinary purposes* is provided automatically by law. The implied warranty usually means that an item is fit for its ordinary purposes—for example, that a refrigerator will keep food cold. Implied warranties exist automatically in retail sales of new and used consumer goods, unless it's made clear that you're buying something "as is."
- An *implied warranty for a particular purpose* happens when you ask the seller or manufacturer for advice about whether the item will be suitable for a particular purpose, receive assurances that it will, and rely on that when you buy the item. For example, you have an implied warranty of fitness for a particular purpose when you ask a tire seller which size tires will fit your car, he identifies them and, based on that assurance, you buy those particular tires.

If an express warranty is breached, you may be entitled to have the item repaired

or to get a replacement, a refund, or compensation for your losses. Although most states give you four years to sue for a defect if the seller or manufacturer won't or can't repair it, usually that means four years from when you bought the item, not four years from when you discovered there was a defect. Written warranties can further limit your time to sue if the warranty so provides, to as little as one year. The lesson is, don't wait. If you can't get a warranty problem resolved in a reasonable amount of time and may want to sue, talk to an attorney who specializes in consumer cases or do your own research right away.



RESOURCE

More information on suing for breach of warranty. You'll find a thorough discussion in *Everybody's Guide to Small Claims Court*, by Ralph Warner (Nolo).

If a defect is covered by a warranty, you can ask the seller or manufacturer to fix or replace the item. Usually, before you take further steps, you must allow the warrantor a reasonable amount of time to repair it or, if it can't be repaired, replace the item. What's "reasonable" depends on the circumstances. For a serious problem like defective brakes, one failed attempt to get a replacement or repair may be enough. For more minor problems, several attempts over several months may be reasonable. Keep a log of all conversations and other communications with the warrantor, how long you lost use of the item while it was being repaired, how many times it was repaired, and what

the problem was at the beginning and after each repair attempt. If the manufacturer or seller won't attempt a repair, or they try a reasonable number of times but the item is still defective, you have to decide on your next step.

You have three options. You can sue the manufacturer or seller (as explained above), try to resolve the dispute through voluntary arbitration or mediation (in some cases, you must do this before suing), or stop making payments on the item.

Not all problems or defects, however, are serious enough to allow you to stop making payments. If you used a charge card or credit card to buy the disputed item, in most cases you can withhold payment by following a specific procedure. See Chapter 10 for the details. For other purchases, generally, you can stop payments if:

- The problem is substantial.
- You did not know about it when you bought the product.
- You gave the warrantor a reasonable chance to repair the problem.
- You have not damaged or abused the product.

Even if you meet these criteria, withholding payments can be a risky strategy, especially if the creditor holds a security interest in your property. (See Chapter 4 to learn the difference between a secured and unsecured debt.) If you are making payments to the manufacturer or seller, they may not agree with your version of events and may sue you for not making payments, or if there is a security interest, repossess the security. It may be best to consult an attorney who specializes in consumer cases

Sample Letter to Stop Paying After Failure to Repair on Warranty

July 19, 20xx

Mr. Clifford Greed, President

Spiffy Tires

501 Geary Avenue

San Bruno, Iowa 52747

Re: Newbald Tires Warranty Failure and Stopping Payment

Dear Mr. Greed:

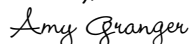
I bought four new Newbald tires from your company-owned store on July 14, 20xx. Your company included a 30,000 mile pro-rata warranty. When I drove my car away, there was a terrible thumping noise. I drove right back and both the service person, James Stoel, and the manager, Brian Lion, said the noise was due to bits of rubber sticking out on the new tire and it would go away. So I drove on the tires for two weeks and the thumping noise got worse. I took the car back and the store rotated the tires. The noise didn't go away. I took them back again about two weeks later and then the manager said that noise was normal.

When I took my car in for service about a month later, my mechanic found bulges on the tires and said they could be dangerous. I again took them back to your store. Your manager said I had damaged the tires, the bulges weren't dangerous, but he could fix the tires by shaving a bit from the sidewalls and reburnishing them. He refused to replace the tires.

I was concerned about the danger so I took my car to another tire company to look at the problem. They they saw the bulges and said the tires should be replaced. They said that "shaving" the sidewalls would make no difference and might even make the tires weaker. I had them replace the tires.

I do not believe the tires were ever fit to be sold for their ordinary purpose. I have statements from both my mechanic and the other tire company. I have already paid you \$250 of the \$1,000 you charged for the tires. I am not going to make any more payments and I believe you should refund what I have already paid. Please contact me at the address below to resolve this within 10 days from the date of this letter.

Sincerely,



Amy Granger

500 Fort Point

San Francisco, CA 94105

before you withhold payments, especially if the creditor holds a security interest.

There may be other reasons why withholding payment is not a good option. For example, if maintaining a good relationship with the seller is important, you might be better off working out a compromise or payment arrangement. If you can't reach an agreement, ask the seller to mediate the dispute through a community or Better Business Bureau mediation program. But don't agree to arbitration or mediation if you will be prevented from suing if you lose. See Chapter 14 for more information on arbitration and mediation.

If you decide to withhold payment and you are paying the seller directly (for example, you charged an item on a department store account), send the seller a letter explaining the problem and why you intend to stop making payments (see above for a sample), then stop paying. Keep a copy of the letter and any enclosures, such as repair receipts. If you are making payments to anyone other than the seller (or, in certain circumstances on a credit card—see Chapter 10), stopping payments can be very risky and you should contact a lawyer before you take that step.

Your Car Is a Lemon

New cars cost many thousands of dollars. For that amount of money, you expect a safe and reliable product. But some new cars are lemons, and buyers find themselves in and out of the shop month after month.

Every state has some sort of “lemon law” to help consumers. In most states, you can get help under the lemon law if:

- Your new car has a “substantial warranty defect” within one year or a certain mileage period, whichever comes first. About a dozen states extend this period to two years. A substantial defect is one that impairs the car's use, value, or safety, such as brakes or turn signals that don't work. Minor defects, such as a loose radio knob or door handle—even several minor defects or one that remains unfixed after many attempts—don't qualify.
- The defect is covered by the express warranty and remains unfixed after three or four repair attempts or after the car has been in the shop a cumulative total of 30 days during the time or mileage period.

If your car is covered, you have the right to a refund or replacement car from the manufacturer. The steps you must take vary from state to state. In most states, you must first notify the manufacturer of the warranty defect. It is best to send written notice by certified mail, so you can prove that you notified not just the dealer, but the manufacturer as well. If the manufacturer does not offer a satisfactory settlement, in most states, you must submit the dispute to an “informal dispute mechanism” (IDM). IDM is similar to arbitration but has some important differences, making it more protective of consumers. For the most part, the process is free and designed to take place without a lawyer.

Most IDM programs allow you to request an in-person hearing. Do this if you can, because telling your story in person usually works in your favor. Consumers who bring substantial documentation to the hearing tend to do better than those with little evidence to back up their claims. The types of documentation that can help include:

- a log of your efforts to have repairs made, including telephone records showing calls you made, tapes of phone messages left on your answering machine (you can legally submit these tapes, but tape recording live conversations is illegal in many states)
- copies of letters you wrote, a copy of the notice you sent to the manufacturer, and the return certified mail receipt showing the manufacturer received your notice
- brochures and ads about the vehicle and the written warranty
- service records showing how often you took the vehicle into the shop, and
- any other documentation you can find that shows other statements the seller or dealer made about the car before you bought it or about the problems and repairs to it, as well as your attempts to talk to the dealer or to get the dealer to repair the car.

At the hearing, the hearing officer listens to both sides. The officer then has about 40 to 60 days (sometimes less) to decide whether or not the car is a lemon. Manufacturers are typically bound by the hearing officer's decision, though consumers can usually go to court if they don't like the ruling. The hearing officer may not be able

to award "consequential" damages, such as the cost of renting a car while the lemon was in the shop.

This process can take a long time. Most lemon laws allow you to keep using your car while pursuing a claim. But never use your car if doing so would be unsafe. Even if you can drive your car safely, some courts may view your case less favorably if they know that you were able to use your car while you awaited resolution of the problem.

Be aware that stopping payments can be risky, especially because you will usually owe the money to a bank or other lender who may argue it's not their problem that you have a lemon. If you want to stop paying, it is best to consult with an experienced consumer protection attorney first.



RESOURCE

If you think your new car is a lemon, there is a lot more you can do to make the best case for getting a refund or replacement.

- Check the state-by-state summary of lemon laws at www.autopedia.com.
- The nonprofit Center for Auto Safety (www.autosafety.org) has detailed information about specific defects in various car makes and models.
- The National Highway Traffic and Safety Administration investigates and researches consumer complaints about car defects. Its website has information about defects and recalls and provides access to technical service bulletins that manufacturers give to dealers, which may contain valuable information showing what the manufacturer knew about recurring problems with its

cars. Visit its vehicle safety website at www.safercar.gov or call its Vehicle Safety Hotline at 888-327-4236 (TTY 800-424-9153).

- The International Association of Lemon Law Administrators, www.ialla.net, has links to the lemon law website for each state.
- *Return to Sender: Getting a Refund or Replacement for Your Lemon Car*, by Nancy Barron (NCLC), is a comprehensive guide to your rights and remedies under state lemon laws. It's available from the National Consumer Law Center (www.nclc.org or 617-542-9595).

Lemon laws typically apply only to new cars, but that doesn't mean used cars aren't subject to the ordinary protections under general warranty laws. So what do you do if you buy a used car that has a substantial warranty defect? Here are some ideas:

- Read the sales documents or car stickers you received when you bought the vehicle. They may create an express warranty that the seller cannot get out of.
- Some states have lemon laws covering used cars. Check your state's rules at www.autopedia.com.
- In many states, used cars must meet certain minimum safety and equipment standards. A seller can't avoid these requirements by selling a vehicle "as is."
- Several states prohibit or limit the sale of a used car as is or require special disclosures when any used product, including a motor vehicle, is sold as is. Check your state statutes for used product sales (Chapter 19 explains how).
- In many states, the new car lemon law applies to demonstrator cars.

Home Mortgage Contracts

The Truth-in-Lending Act's Regulation Z provides homeowners additional protections on loans secured by their homes (except on open-end credit, known as a home equity line of credit, also called a HELOC).

You may not owe late payment penalties charged in the following circumstances:

- "Servicers" (any company to which you send your home mortgage payments) must credit your payment on the day received, unless you failed to follow the written instructions for how and where to make your payments.
- If you send the full amount for the regular monthly payment, servicers may not charge you a late payment penalty because you still owe a late payment penalty on an earlier monthly payment.

At your request, servicers must also provide within a reasonable time a statement of the total outstanding balance (for example, so you can refinance). If you believe you have been the victim of any of these practices and cannot resolve the payments with your servicer, send a complaint to the Federal Reserve Board (see Appendix A).

You Canceled a Contract

Contrary to common myth, you don't have an automatic right to cancel most contracts if you change your mind within three days. For the most part, after you sign a contract you must pay what you said you would, or be liable for damages you cause the seller if you don't pay. Depending on the circumstances,

the damages you would have to pay may be a lot less, equal to, or even more than paying the contract, so it is risky to “breach” a contract by stopping payment.

Here are some of the contracts that you may cancel if you act within the specified time.

Door-to-Door Sales Contracts

Under federal law, you can cancel certain consumer contracts, in person or by mail, until midnight of the third business day after the contract was signed. You can cancel the contract without any penalty or obligation. (16 C.F.R. § 429.1.) State laws on the subject must be at least as protective of consumers as the federal law, but may provide consumers even more protection. The seller is supposed to tell you of your right to cancel and give you a cancellation form when you sign the contract. In most cases, if the seller did not give you a cancellation form or if there was a problem with the form that kept you from understanding your right to cancel, your right to cancel continues until the seller provides the required cancellation information. If you are given proper notice at a later date, you have three business days from that date to cancel the contract.

The contracts you can cancel are:

- door-to-door sales contracts for \$25 or more, even if the seller is responding to your invitation made other than at the seller’s store—for example, if you called or sent an email or response card, and
- a contract for \$25 or more made anywhere other than the seller’s normal

place of business, if the seller personally solicited the sale—for instance, at a sales presentation at a friend’s house, hotel, restaurant, outdoor exhibit, computer show, or trade show. Public car auctions and crafts fairs are not included, nor are most sales made by mail, the Internet, or telephone, even if you called from home. (But some state laws do treat sales made by telephone from your home as door-to-door sales, and other laws may allow you to cancel mail, Internet, or phone sales contracts; see below.)

There are a few exceptions. Real estate rentals or sales, and sales of insurance, commodities, or securities by registered broker-dealers are not covered. If someone you invited to do repairs also sells you something, besides the items needed to make those repairs, those additional sales are not covered (the original work and repair items are covered by the three-day right to cancel). If you need emergency repairs, the seller can provide them without giving the three-day right to cancel, but only if you sign a statement describing the emergency and agreeing to give up your three-day right. Do not be persuaded or bullied into doing that if you don’t have a true emergency.

After canceling, the seller must refund your money within ten business days. You must make the goods available to the seller at your home. The seller must either pick up the items or reimburse you within 20 days for your expense of mailing them back to the seller. If the seller doesn’t come for the goods or arrange to pay for you to mail them back, you can keep them.

Home Equity Loan Contracts

Whenever you pledge your residence as security for any consumer loan, the federal Truth in Lending Act requires the lender to tell you, “clearly and conspicuously,” that you have three business days to cancel. The lender must give you all required cancellation forms. Your right to cancel lasts until midnight of the third business day (this includes Saturdays) after you sign the contract, receive all important information about the financing terms, or receive the notice and cancellation forms, whichever is later.

This cancellation right applies to home improvement loans, second mortgages, consolidation loans, and any loan for which a security interest is taken in your home. The cancellation right does not apply to:

- a mortgage to buy the house where you live
- a refinancing or consolidation, by the same creditor, of a loan already secured by the house where you live (the right to cancel does apply if the refinancing involves a new extension of credit, but applies only to the new credit), and
- advances under a home equity line of credit where the security interest already exists.

The right to cancel can last up to *three years* if the creditor doesn't give you all the material disclosures of the loan terms or the notice of cancellation form before you sign the loan papers. It also extends for up to three years if the lender included an illegal prepayment penalty. Some prepayment penalties are allowed. If you have a prepayment penalty, see Chapter 11 to see if

yours is allowed. If you're past the three business days but think you have grounds for canceling, consult an experienced consumer lawyer right away. (See Chapter 19 for help in choosing an attorney.)

If you cancel, you don't have to pay any finance charges, and the lender's security interest in your property is void. After the lender gets your notice of cancellation, it has 20 days to give back any property you provided (such as a down payment or earnest money). You must then return any property the lender gave you or pay its reasonable value. (15 U.S.C. § 1635; 12 C.F.R. §§ 226.15 and 226.23.)

Contracts for Credit Repair Services

Under federal law, companies that provide services to improve your credit rating must give you two copies of a notice of your right to cancel the contract within three days. You may cancel by dating and signing the notice and mailing or delivering it before midnight of the third business day after you signed the agreement. (15 U.S.C. § 1679.) Because the credit repair company is not allowed to accept any money from you until it has performed its services, you should also be able to get a refund of any money you paid to the company during the three-day period.

Contracts You Can Cancel Under State Law

Most states have additional laws that allow consumers to cancel certain written contracts not covered by federal law. These contracts

are usually not limited to purchases made at home, but cover particular types of products or services. Typical contracts you may be allowed to cancel include:

- timeshares
- health club memberships
- dating services
- credit repair services (federal law also provides for cancellation of these services, as discussed above)
- dance lessons
- life insurance or annuities, and
- camping memberships.

Some states allow you to cancel a contract if you negotiate in a language other than English and are not given a translation of the contract in that other language.

You usually have three to ten days to cancel. For specifics, contact your state consumer protection agency (see below).

How to Contact Your State's Consumer Protection Agency

Every state has a consumer protection agency, sometimes called just that, and sometimes called consumer protection "units" or "divisions." In some states, the state attorney general handles this issue. To find your state's agency, go to www.consumeraction.gov (click on "Where to File a Complaint" and "State Offices"), or to the official state website ([www.\[state postal code\].gov](http://www.[state postal code].gov)), and search for consumer protection. You'll eventually find a page with contact information and articles and information of use to consumers.



CAUTION

Despite popular belief, you have no right to cancel an auto contract. You don't have a right to cancel a contract to buy or lease a car. California law requires car dealers to offer those who buy certain new vehicles the opportunity to buy a two-day contract cancellation option. (Cal. Civ. Code § 2982; Cal. Veh. Code § 11713.21.)

Other Grounds to Cancel a Contract

Even if the cooling-off period has expired or no cooling-off period applies to your purchase, you still might be able to cancel a contract due to certain circumstances that existed at the time you signed it, including:

- **Incapacity.** If you were not able to comprehend the contract when you signed it, you might be able to cancel it. This sometimes happens when an elderly person or a person with dementia is convinced to sign a contract.
- **Minors.** If you were a minor when you signed the contract, normally you will not be bound by it, but you may be bound if the contract is for necessities, such as food, clothes, or shelter. In most states, a minor is someone under the age of 18.
- **Fraudulent misrepresentation.** A contract may be canceled if the seller intentionally misrepresented critical terms of the contract and you relied on the seller's claims when you decided to sign the contract.
- **Unconscionability.** Courts may allow you to cancel a contract if the terms

are so onerous that they “shock the conscience,” or if the bargaining process was extremely unfair.

- **Illegal contract.** Depending on the circumstances, you may be able to cancel a contract that is not allowed by law. For example, some laws require businesses to provide consumers with certain disclosures when entering into some types of contracts. If the business did not provide you with the proper disclosures, a court may allow you to cancel the contract and get a refund. You may also try to use the fact that a contract does not comply with legal requirements to negotiate a settlement of a debt.

If you think one of these situations applies, consult an attorney. It's unlikely that dialog alone will convince a seller to cancel the contract, but you may be able to sue and get back money you already paid, plus additional damages. If you're sued, you may be able to defend against collection.

Canceling mail, phone, or online orders

You don't owe money for goods you ordered by mail, phone, computer, or fax if you cancel the order because the seller doesn't ship them to you as promised. (Federal Trade Commission's Mail or Telephone Order Rule, 16 C.F.R. § 435.) If the seller doesn't ship to you within the time promised, or within 30 days if no time was stated (50 days if you seek credit from the seller to pay for the order), the seller must send you a new shipping date and offer you the option of canceling your order and getting a refund.

If you opt for the second deadline, but the seller can't meet it, the seller must send you a notice requesting your signature to agree to yet a third date. If you don't return the second notice, your order must be automatically canceled and your money refunded. But don't rely on the seller—let the seller know you want your money back.

The seller must issue the refund within seven days if you paid by check or money order and within one billing cycle if you charged your purchase. If your credit or charge card was never billed, but the time promised for sending has passed and you no longer want the goods, immediately call the company to cancel your order. (See Chapter 10 for information on your rights to cancel goods paid for by credit card.)

This rule does not cover photo developing, magazines after the initial shipment on a magazine subscription, goods ordered COD, or seeds or plants, but you may have other rights that would let you cancel after an unreasonable delay.

Call the seller or lender and say that you want to cancel the contract. If you don't already have it, say that you want the seller's form to use as your formal written request to cancel (in some transactions, sellers must give you the form when you make the purchase, as explained below). This puts the seller on notice, even if your cancellation form is lost. Be careful, though. Some sellers will use that opportunity to try to convince you not to cancel and may make additional promises to keep you from canceling within the required time period. Or they may tell you that you don't need to do anything else

to cancel. *But calling isn't enough.* You must sign and date a copy of the cancellation form you were given. Send it by certified mail, return receipt requested, so you have proof of the mailing date. Or you can write the seller a letter identifying the transaction and stating "I hereby cancel this transaction," and sign and date the letter. Send the notice or letter to the seller's address in the contract. Be sure to keep a copy.

In this electronic age, can you fax or email your notice? Usually, the law authorizes only delivery by mail, telegram, or in person. If you have no option but to give notice by fax or email, follow up immediately by personally delivering a hard copy or by mailing it using the fastest delivery method possible (send it "return receipt requested," so you have a record of its delivery).

You Received Goods You Didn't Order

You certainly shouldn't owe any money if you receive an item you never ordered—it's considered a gift. In California, for instance, a law specifically says you may treat unordered items as a gift. If you get bills or collection letters from a seller who sent you something you never ordered, write to the seller stating your intention to treat the item as a gift. If the bills continue, insist that the seller send you proof of your order. If this doesn't stop the bills, notify the state consumer protection agency in the merchant's state.

Subscriptions to Magazines You Didn't Order

This may be a familiar scenario: Your mailbox contains a promotion for a new magazine—"Free trial issue. No obligation." You send for the trial issue and don't like it. A month later you get a bill. There may have been instructions hidden with the offer telling you that you had to write to avoid subscribing and paying for additional issues.

When you get additional issues or a bill, write to the seller, enclosing a note that you requested a free trial issue and you don't want a subscription, even if it is months after you requested the free trial issue. If that doesn't work, contact the FTC at www.ftc.gov or 877-382-4357, and ask for help getting the company to stop billing you.

If you have been victimized by a fraudulent promotion offer by mail, you can also contact the United States Postal Inspection Service. Call your local postal inspector's office, go to <http://postalinspectors.uspis.gov>, or call 877-876-2455.

If you receive unordered merchandise as the result of an honest shipping error (for example, you were sent ten blankets instead of one), write to or call the seller and offer to return the items if the seller pays for the shipping. Give the seller a specific length of time—ten days is about right—to pick up the merchandise or arrange for you to send it back at no cost. Ask the business for its UPS

or other delivery service shipping number. Let the seller know that if it doesn't retrieve the goods by the end of the ten days, you plan to keep the items or dispose of them as you see fit. If the seller doesn't arrange for return of the items after you called, send a letter confirming what you told the seller. (See a sample letter below.)

If you sent away for something in response to an advertisement claiming a free gift or trial period and are now being billed, be sure to read the fine print of the ad. It may say something about charging shipping and handling, or you may have inadvertently joined a club or subscribed to a magazine. Write the seller, offer to return the merchandise and say if you believe the ad was misleading. Send copies of the letter to the agencies listed in "You Are the Victim of Misrepresentation or Other Fraud," above.

You Don't Want Goods on Layaway

If you're buying an item on a layaway plan—where the seller keeps the merchandise until you pay for it in full—and you decide before you've finished paying that you no longer want it or cannot afford to pay more, read your layaway agreement. Find out if you have the right to stop paying and get a refund of what you've paid. If you do, the seller may be able to keep a portion of your payments as a service fee. But this fee should be small—the cost of storing your goods—and you should get the rest back. Some state laws also protect your rights when you buy

on layaway. See Chapter 19 for how to find your state's laws.

If the contract doesn't say anything about your right to a refund, stop paying and ask for your money back. If the seller refuses and there's no law giving you a right to a refund, you're probably out of luck.

Canceling Automatic Deduction Payments

Automatic deductions from bank accounts can be a convenient way to pay some regular bills, saving you time, checks, and postage. You can authorize monthly debits for everything from mortgages, student loans, and utilities to car payments and health club memberships. But if your bank doesn't make automatic payments on time, it will be you who suffers the consequences: late fees and a blemish on your credit report.

Or you might find yourself with the reverse problem: You want the bank to stop deducting a payment from your account, but every time you open your bank statement, there it is again. What started out as a convenience has become a costly nuisance. Sellers also like to set up these kinds of payments, and sometimes unscrupulous sellers get your authorization to set up these payments without your realizing it.

Stopping payments. You have the right to halt unauthorized and most preauthorized deductions at any time. (See 12 C.F.R. § 205.) If you're having trouble stopping an automatic debit, the fastest way to get results

Sample Letter Confirming Availability of Unordered Goods

July 19, 20xx

Jan Gough
Customer Service
Major Catalog Co.
2165 Washington Avenue
Kold, MN 52954

Re: Unordered blankets available for return

Dear Sir or Madam:

This confirms my telephone conversation with you on July 7, 20xx.

I explained:

I ordered one wool blanket, Item Number 27546 from Major Catalog Co.

On July 18, I received a delivery of ten wool blankets, all of the same item number.

I was charged for all ten blankets on my credit card.

I did not order the other nine blankets.

I have the blankets available for pick up and will hold them for ten days, or I will send them back to you if you provide me within that time with your shipping account number for UPS or any other delivery service available in this area.

You agreed I did not owe for the other nine blankets and prepared a credit for my credit card. You said you were unsure how to handle the return of the extra blankets and said you would check and call me back to let me know. I also explained that if you did not either pick up the extra blankets or provide me with information within ten days so they can be returned to you at your expense, I would keep them or dispose of them as I see fit. It has now been more than ten days and I have received no instructions from you for the return of the blankets. So, I will keep them or dispose of them as I see fit.

Sincerely,

Amy Granger
Amy Granger
500 Fort Point
San Francisco, CA 94105

is to contact your bank, not the business that's receiving payments.

Under federal law, you must call or write your financial institution requesting a stop at least three business days before the scheduled debit. If you make an oral request, the bank may require you to confirm it in writing within 14 business days of your call.

If you never authorized—or revoked authorization for—a deduction but the bank deducted your money anyway, file a complaint with the bank. It's best to do it in writing; the bank may require written confirmation within ten days after an oral complaint. The bank must receive your complaint within 60 days after sending you the first statement that shows the unauthorized transfer. Your complaint should include your name, account number, as much information as possible about the date, type, and amount of the transfer, and an explanation why the transfer was not authorized. In general, once you report an error, the bank must investigate within ten business days and report the results to you within three business days after that. After determining an error occurred, the bank has one business day to correct it. Usually, if the bank needs more time to investigate, it can have 45 days but must provisionally credit your account in the meantime. In some circumstances, the deadlines for the bank are longer. (See 12 C.F.R. § 205.11(c) at <http://ecfr.gpoaccess.gov>.)

Late payments. If you've been hit with late fees because the bank was tardy, don't just pay up. Check your deposit agreement to see whether the bank is liable for the fees.

You've Been "Slammed" by a Phone Company

Sometimes a telephone company will electronically switch your local or long distance telephone service from the company you had selected (the authorized carrier), without your knowledge. This is called "phone slamming," and it is prohibited by federal law (47 C.F.R. § 64) and by general consumer protection laws or more specific laws in most states. Under the federal law, you do not have to pay for any calls you've made within the first 30 days after you've been slammed. After the first 30 days, you are required to pay to the carrier you authorized only the amount that carrier would have charged for the calls. (47 C.F.R. § 64.1140.)

What if you discover that you've been slammed only after you pay the slammer? The slammer is supposed to pay your authorized carrier 150% of the charges that you paid, and your preferred carrier then is supposed to reimburse you 50% of what you paid. For example, if you paid the slammer \$100, it is supposed to pay your authorized carrier \$150, and your authorized carrier is supposed to reimburse you \$50. If your charges from the authorized carrier would have been less than that, you can ask that carrier to re-rate the calls you made and paid to the slammer, so that you receive a refund of anything in excess of what you would have owed your authorized carrier for those calls.

If you've been slammed, you should:

- Call the phone company you authorized to provide you telephone service and ask to be reconnected. Explain that you

did not order the service from the new company and that any “change charge” should be taken off of your bill.

- If you have paid the slammer, ask your authorized carrier to seek the 150% penalty from the slammer and to reimburse you 50% of what you paid and re-rate the slammer’s charges to see if you are entitled to an additional refund.
- Call the slammer and ask it to remove all charges incurred within 30 days of the slamming. Calls after that time should be recalculated according to your authorized provider’s rate. If you have paid the slammer, remind it that it must pay the 150% penalty to your authorized carrier.
- If the company that slammed you refuses to cooperate, contact the Federal Communications Commission (FCC) by calling 888-225-5322 (TTY: 888-835-5322) or go to www.fcc.gov/slamming to see if your state is listed as the place to file your complaint. Some states handle slamming complaints and others leave it to the FCC.

You’ve Been “Crammed” by a Phone Company

“Cramming” happens when unauthorized, misleading, or deceptive charges are placed on your telephone bill. Often, crammers rely on confusing telephone bills in an attempt to trick consumers into paying for services they did not authorize or receive, or that cost more than the consumer was led to believe.

How Does Cramming Occur?

Telephone companies, particularly local ones, often bill for long distance and other services. If any telephone company, or other type of service provider either accidentally or intentionally places unauthorized, misleading, or deceptive charges on your bill, you may have been “crammed.” Unauthorized charges may also appear if your cell phone was lost or stolen. If you agreed to services, but were misled about the true cost, that is another form of cramming.

What Do Cramming Charges Look Like?

Look for descriptions you don’t understand. They may be legitimate if you authorize them but, if unauthorized, could constitute cramming. For example, look for entries like “service fee,” “service charge,” “other fees,” “voicemail,” “mail server,” “calling plan,” “psychic,” “monthly fee,” and “membership.”

If You Have Been Crammed

The federal Truth-in-Billing Rules (47 C.F.R. §§ 64.2400–64.2401) require that charges from different service providers be separated and clearly and conspicuously identified. Descriptions of services must be brief, clear, nonmisleading, and in plain language so you can tell if the charge is one you authorized. The bill must also make clear whether failure to pay a service can result in your phone service being cut off. Ordinarily, basic local phone service cannot be cut off for nonpayment of other charges.

Review your telephone bill carefully every month, just as you would any credit card bill. Crammers often go undetected by charging small amounts month after month. Call the company that sends you the bill and any toll-free number listed on your phone bill for the service you question to ask for an explanation of any charges you don't understand or that seem higher than what you expect. Request an adjustment to your bill for any incorrect charges. If your phone is lost or stolen, immediately report it and ask that all charges from the time you lost the phone be deleted from your account.

If neither the company sending you the bill nor the company that provided the

service in question will remove charges from your telephone bill that you consider to be incorrect, file a complaint with the FCC at esupport.fcc.gov/complaints.htm (or call 888-225-5322; TTY 888-835-5322; fax 866-418-0232; or write to the Federal Communications Commission, Consumer & Governmental Affairs Bureau, Consumer Inquiries and Complaints Division, 445 12th Street, SW, Washington, DC 20554). Send a copy to your state utility commission. To find your state agency, go to www.naruc.org/commissions.cfm or check the government section of your local telephone directory.



Prioritizing Your Debts

Secured and Unsecured Debts	44
Secured Debts.....	44
Unsecured Debts.....	45
High-Priority Debts	46
Medium-Priority Debts	49
Low-Priority Debts	50
Review Your Worksheets	52

“I’m living so far beyond my income that we may almost be said to be living apart.”

—e.e. cummings,
American poet, 1894–1962

Some debts are more important than others. This chapter helps you to prioritize your debts so that you can decide which ones are essential to pay and which you might ignore for a while.

Often, creditors with low-priority debts will be pushing hardest for repayment. But paying the noisiest creditors may not be in your best interest. Instead, base your decision regarding which debts to pay first on the consequences of not paying a debt. If they are severe, paying the debt is essential. If they aren’t, payment is a lower priority. It follows that repayment of secured debts is almost always a top priority, because if you don’t pay, you stand to lose valuable property and still may be liable to pay the debt.

If You’re Considering Bankruptcy

If you’re thinking about filing for bankruptcy, read Chapter 15 before you make any payments on your debts. It makes no sense to pay debts you will eventually erase (discharge) in bankruptcy. Also, some payments made during the 90 days before filing for bankruptcy—or one year for payments to, or for the benefit of, a relative or business associate—may be canceled by the bankruptcy court.

Secured and Unsecured Debts

Legally, debts fall into two primary categories: secured or unsecured. Before you can prioritize your debt, you need to understand the difference, because the consequences of not paying a secured debt differ tremendously from those of not paying an unsecured debt.

Secured Debts

A secured debt means that a specific item of property, sometimes called “collateral,” guarantees payment of the debt. The most common type of secured debt is one that you voluntarily enter into with a creditor when you make a credit agreement. It’s usually referred to in the credit agreement as a “security interest.” If you don’t pay, most states let the creditor take the property without first suing you and getting a court judgment. And, the creditor may not even have to give you notice before taking the property. If you’ve ever had a car repossessed when you failed to make a loan payment, you already know how secured debts work. Here are some examples:

Mortgages or home equity loans. The real estate is collateral for the loan. If you don’t pay, the lender can foreclose on the property, even if you used the money for something besides your home.

Loans for cars or other vehicles, for which the vehicle is the collateral. If you fail to pay, the lender can repossess the vehicle.

Store charges with a security agreement—for example, when you buy furniture or a major appliance using a store credit card. If you

don't pay back the loan, the seller can take the property. Most store purchases, however, are unsecured, and even on the secured ones, you don't have to let the creditor into your home to get the property, so practically speaking, you are unlikely to lose this kind of secured property, if it is inside your home.

Personal loans from finance companies.

Your personal property, such as furniture or electronics equipment, may be pledged as collateral. Federal law lets certain creditors use household goods (for example, appliances, a television, kitchenware, a wedding ring, or personal effects) as collateral only if you're buying the goods with the money you're borrowing or the creditor takes possession of the goods when it makes the loan. (16 C.F.R. § 444.2.)

A creditor may also be able to secure its debt without your agreement by filing a lien against your property. This can happen in certain circumstances where a law specifically allows for it. It can also happen when a creditor files a lien against your property after it has sued you and obtained a judgment against you. Here are some examples:

Lawsuit judgments against you. If someone sues you and wins a money judgment, a judicial lien can be placed on your real estate (or in many states, on other property as well). The creditor could foreclose and force the sale of the property, but that's uncommon because it's so expensive. Instead, the creditor usually waits until you sell the property, when the lien gets paid off.

Liens created by law. For example, someone who works on your house and doesn't get paid can place a lien on your home,

without going to court. This is called a mechanic's or materialman's lien. In some states, a homeowners' association can do this if you don't pay your association dues. Although these creditors may be able to foreclose (force a sale and get paid from the proceeds), usually they wait to get paid until you sell the property.

Tax liens. Federal, state, and local governments can place liens on your property if you owe delinquent taxes.

Unsecured Debts

An unsecured debt is one that is not secured by collateral. For example, when you charge clothing on your credit card, the clothes aren't collateral for your repayment. So if you don't pay, the bank that issued the credit card has only one option if you don't pay voluntarily: to sue you and try to collect what it's owed.

Most debts are unsecured, including:

- credit card purchases or cash advances
- gasoline and department store card charges, unless the agreement you signed to open the account contained a security agreement
- loans from friends and relatives
- student loans
- alimony and child support
- medical, dental, legal, or other bills for professional services
- rent
- utility bills
- church or synagogue dues, and
- union dues.

Take a look back at Appendix D, Worksheet 2, Column 5 now and see if you need

to make any changes to mark whether the debt is secured or not, and if secured, to note the collateral. You may need to review the documents you signed when you got the credit to see if they say anything about a security interest in any property. To learn more about credit contracts and understanding loan terms, read Chapter 11.

High-Priority Debts

If you could face serious, even life-threatening, consequences as a result of letting a debt slide, it's a high-priority debt. Usually the most important debts are those secured by collateral that you want to keep, such as your house. However, an unsecured debt may also be essential.

Even if you don't hear from these creditors, don't assume they won't collect the debt. Because secured collectors have such a powerful weapon (they can seize the collateral if you stop making payments), they don't need to hound you the way that collectors with lower-priority debts do.

EXAMPLE: Josh is taking an experimental heart medication for which his health insurance only pays 50%. His outstanding bill to his pharmacist is currently \$350. This is an unsecured debt, but if he doesn't pay it, he won't be able to get the prescription refilled there. Because he has a poor credit history, he probably couldn't get credit elsewhere. Unless Josh can find other assistance, such as subsidized prescription benefits, this is a high-priority debt.

Other high-priority debts include.

Rent. Payments for a place to live are obviously essential. Many people get into serious debt problems because they fail to stay current on their rent. Unless you know you are going to move and have a new place to live, make paying your rent a top priority. If necessary, ask your landlord for a temporary rent reduction. Explain your financial problems and when you'll be able to resume making full payments. Other alternatives include moving into a less-expensive unit owned by the landlord or doing repairs or providing services in return for reduced rent. In any of these cases, be sure you get written confirmation of your agreement from your landlord. (See below for a sample letter confirming an agreement with a landlord.)

Mortgage. Home mortgages and equity loans or lines of credit are secured by your home. If you can't pay, you could lose your home in foreclosure. If you're a homeowner in financial trouble, consider looking for a roommate to help with the mortgage. You may be able to negotiate reduced payments or qualify for a mortgage reduction. (See Chapter 8 for information about negotiating with your mortgage lender.) Although the usual rule is to treat your secured debts, especially the loan on your home, as top priority, that is not always the best option. Be sure to consider the alternatives: sell the house and use the proceeds to pay your creditors and rent a place to live; try to arrange a short sale if your home is worth less than the loans on it; try to get the lender to accept a deed in lieu of foreclosure; or stop making mortgage payments during

Sample Letter Confirming Agreement With Landlord

September 22, 20xx
 Frank O'Neill
 1556 North Lakefront
 Minneapolis, MN 67890

Dear Frank:

Thanks for being so understanding about my being laid off. This letter is to confirm the telephone conversation we had yesterday.

My lease requires that I pay rent of \$750 per month. You agreed to reduce my rent to \$600 per month, beginning October 1, and lasting until I find another job, but not to exceed three months. That is, even if I haven't found a new job, my rent will go back to \$750 per month on January 1. If this is not your understanding, please contact me at once.

Thank you again for your understanding and help. As I mentioned on the phone, I hope to have another job shortly, and I am following all leads in order to secure employment.

Sincerely,
Abigail Landsberg
 Abigail Landsberg

the period of time it takes the creditor to complete the foreclosure process. (See Chapter 8 for more information about how to deal with mortgage or equity loan payments you can't afford or to learn about foreclosure.)



CAUTION

Carefully consider the pros and cons before you sell your house. Your house might be worth more in six months or a year than it is today. Selling it could deprive you of an asset that could make you money over time and lock you out of the housing market once you are back on your feet. On the other hand, if you bought your house with little or nothing down, you have no equity in it, and your mortgage payment is growing astronomically, it may not make sense to try to keep the house. Before you decide, see Chapter 6 and Chapter 8 for alternatives to consider if you are behind on your mortgage or an equity loan.

Utility bills. Being without gas, electricity, heating oil, water, or a telephone is dangerous. You may not have to pay parts of your telephone bill to keep basic phone service (see Chapter 3). For ways to reduce your utility bills, see Chapter 6.

Child support. Your children may be depending on this money to meet their basic needs. Not paying can also land you in jail. If you really cannot pay the required child support, and your income has dropped sharply, you can ask the court to reduce your obligation. (See Chapter 13).

Car payments. If you need your car to keep your job, make the payments. If you don't, consider selling it to avoid repossession,

which will inevitably occur if you fall behind on the payments. You may be able to use the money to buy a cheaper car. If you sell the vehicle, but the sales amount falls short of what you owe your lender, you will have to make up any difference. If you don't sell the vehicle and it's repossessed, the lender will sell it at a fraction of its value, and the difference you owe will probably be even bigger. (See Chapter 7 for more information.)

If you lease your car, you can't just sell it. Instead, you must call the leasing company and arrange to end the lease early. You will have to pay any past-due payments and an early termination penalty (which can be large), but at least you will be out from under the monthly lease payments.

Don't even consider transferring the car to someone who promises to make the monthly payments for you. Such a transfer almost certainly will violate your purchase contract or lease and probably is illegal. And if the business or person who takes the car doesn't make the payments, you'll be responsible for the resulting default on the loan, which will become part of your credit record.

In deciding whether to hold onto the car, consider the amount of your monthly insurance payment, which you'll have to keep current if you keep the car. Lenders usually consider failure to maintain insurance to be an event of default, which can lead to repossession. Also, the lender can obtain insurance to protect its interest in the car, which usually is very expensive, and hold you responsible for the premiums.

Other secured loans. Secured debts, you'll recall, are linked to specific items of property

such as a house or car. In addition, debts on boats, RVs, and expensive electronic gear are likely to be secured. This means that the property (called collateral) guarantees payment of the debt. If you don't repay the debt, most states let the creditor take the property without first suing you and getting a court judgment. If you don't care if the property is taken, don't worry too much about missing a payment or two. If the property is something you cannot live without, however, and you think the creditor will take it, you'll need to keep that debt current. Or try to work out a compromise with the creditor. (See Chapter 5.) Remember: If you bought the boat, RV, or home theater system using your equity line or a second mortgage, missing a payment is just like missing a mortgage payment—you could wind up losing your house.

Unpaid taxes. If the IRS is about to take your paycheck, bank account, house, or other property, negotiate to set up a repayment plan immediately. You have the right to an installment agreement if all of the following are true:

- You owe \$10,000 or less.
- You've paid your income tax and filed returns on time for the past five years.
- You haven't entered into an installment agreement with the IRS during that period.
- The IRS determines that you can't pay the full amount of tax you owe when it's due.
- You agree to pay the full amount within three years. (See IRS Form 9465, *Installment Agreement Request*, available at www.irs.gov.)

Even if the amount you owe exceeds \$10,000, or it will take you more than three years to pay, or you've defaulted on an agreement with the IRS in the past, the taxman might still be willing to negotiate a payment plan if you can convince the agency that you'll stick with it. (For tips on negotiating a compromise for taxes owed, see Chapter 5, "Income Taxes.")



RESOURCE

More information on tax negotiation. The best resource available to help you deal with the IRS is [Stand Up to the IRS](#), by Frederick W. Daily (Nolo).

Medium-Priority Debts

Some debts fall into a middle ground. Not paying them won't cause dire consequences in your personal life but could prove painful nonetheless. In deciding whether to pay these debts, consider your relationship with the creditor—is this person a friend, valued family member, someone you depend on? You'll naturally want to honor those debts if you can. Also, consider whether the creditor has begun collection efforts. You may be tempted to ignore a creditor who has contacted you for the first time but will want to deal with the one who is about to get a judgment against you. On the other hand, it may be easier to negotiate terms of payment earlier in the process.

Some important debts to review are:

Car insurance. In some states, you can lose your driver's license if you drive without

insurance. Also, lenders that finance the car sale usually consider failing to maintain insurance to be a default, which can lead either to the lender buying insurance that is often much more expensive than what you could find and charging you for it, or to repossession of your vehicle. To lower the cost, look for insurance with the minimum coverage required by your state and a high deductible. Check with your state's motor vehicle department to find the minimum amount of auto insurance coverage required.

Medical insurance. Especially if you are under a physician's care, you'll want to continue making payments on your medical insurance. Sometimes, you can lower your monthly premium payment by agreeing to a higher deductible.

If you have medical insurance through work and you lose your job, you'll probably be able to keep your insurance coverage for at least 18 months and, in some cases, 36 months (extended coverage like this is referred to as "COBRA"), but you will have to pay the whole premium plus 2% to compensate your ex-employer for continuing to handle the coverage.

The American Recovery and Reinvestment Act of 2009, commonly referred to as the "stimulus package," reduced the cost of COBRA premiums for some people. If you became unemployed (or lost insurance coverage because of a reduction of hours) after September 1, 2008 and before May 31, 2010, you may have to pay only 35% of the premium on COBRA health insurance coverage for up to 15 months. If you have been overpaying, you may be able to get a refund. For details about COBRA go to the

Department of Labor's website at www.dol.gov (click on "Health Plans and Benefits," then "Continuation of Health Coverage").



TIP

The new health care law may help

you save money. Changes to health care law enacted in 2010 might mean lower medical bills in the future. The law requires insurance companies to allow children to stay on their parents' health insurance plans until age 26. Other changes that are being phased in may also help, such as preventing insurance companies from denying coverage when you become ill and eliminating annual and lifetime caps on coverage. To learn more about the health care bill and how it may benefit you, get the free guide published by Consumer Reports, at www.ConsumerReportsHealth.org.

Car payments for a car that is not essential for your job. If not having a car is extremely inconvenient, making car payments may make sense.

Items your children need. Paying for a tutor for your child may not seem essential, but if the alternative is to have your child grow up unable to read, you probably want to keep paying for the help. Or, look for a free tutor through your child's school or local community center.

Court judgments. A creditor who wins a court judgment can collect it by taking a portion of your wages or other property. If a judgment creditor is about to grab some of your pay, paying this creditor may be essential even if the original debt wasn't.

Federal student loans. Although federal and federally backed student loans are

unsecured, those debts may merit higher priority in certain circumstances. For example, a defaulted student loan can keep you from getting a new student loan or grant to go back to school. Also, student loan collectors have special rights that are not available to the average unsecured creditor. For example, the IRS can intercept your income tax refund to collect a defaulted student loan. Agencies that guarantee student loans and the Department of Education can garnish up to 15% of your disposable income (see Chapter 12). Finally, student loans are very difficult to discharge in bankruptcy. Don't confuse federal or federally backed student loans (e.g., FFEL, PLUS, Direct, and Stafford) with private student loans. Private student loans are not offered or backed by the federal government. Private student loans generally don't have the special collection rights that federal or federally backed student loans have, so they probably don't merit the same priority in your payment plans as federal or federally backed student loans do. Due to a change in the bankruptcy law in 2005, however, private loans are now just as difficult to discharge in bankruptcy. (See Chapter 12 for more help in eliminating student loans or reducing payments on them.)

Low-Priority Debts

A low-priority debt is one with no immediate or devastating effects if you fail to pay. Paying these debts is a desirable goal, but not essential.

Credit cards. In most cases, credit card debt fits into the low-priority category. True, the consequences of not paying credit card debt have increased significantly in recent years, and if you're on the edge financially, the effects of not paying could be devastating. But in general, if you don't pay your credit card bill, the worst that will happen before the creditor sues you is that you will lose your credit privileges. If you need a credit card, for example, to charge an upcoming medical operation or to rent a car on a business trip, keep—and pay the minimum on—one card, and put that card on your high-priority list.

If you don't make your minimum credit card payments on time, the card issuer may increase your interest rate and fees on the card. In the past, many credit card companies also used your failure to pay *another* creditor as a reason to raise the interest rate on your card. The new Credit CARD Act, which became effective on February 22, 2010, prevents credit companies from raising the interest rate on your outstanding balance unless your payment is at least 60 days late on that particular card only. (15 U.S.C. §§ 1637 and 1666.) If the creditor does raise your rate, it must give you at least 45 days notice before it starts charging the new rate. (To learn more about the new Credit CARD Act, read Chapter 10.)

If, after prioritizing your debts, you decide that paying off your entire credit card bill is a realistic goal, making minimum payments should be a short-term remedy only. You'll have to pay more than the minimum if you want to make a dent in the debt. (See

Chapter 10 for more on the dangers of making only minimum payments.)

Department store and gasoline charges. If you don't pay these bills, you'll probably lose your credit privileges for those cards. However, issuers of your other credit cards cannot raise the interest rate because you are behind on a different card. If the debt is large enough, you may be sued. If the creditor took a security interest in personal property you bought using the credit card (this is unusual), the creditor may try to repossess the property, though vehicles are usually the only things creditors bother to repossess. Keep in mind that even if the creditor wants to take property that is inside your home, you do not have to let the creditor into your home.

Loans from friends and relatives. You may feel a moral obligation to pay, but these creditors should be the most understanding with you.

Newspaper and magazine subscriptions. These debts are never essential.

Legal, medical, and accounting bills. These debts are rarely high priority. A medical bill may be, however, if you are still receiving necessary treatment from the provider to whom you owe money.

Other unsecured loans. Remember, an unsecured loan is not tied to any item of property. The creditor cannot take your property. If you refuse to pay, the creditor can collect from you only by suing you and obtaining a court judgment. These unsecured debts are rarely, if ever, essential to pay first. Keep in mind, however, that a court judgment turns an otherwise low-priority,

unsecured debt into a high-priority one. Creditors can collect on a court judgment by taking a portion of your wages or other property. (See Chapter 14.)

Review Your Worksheets

Take a look back at Column 6 in Worksheet 2 in Appendix D. Now, with a pencil, mark with a “1” each of the high-priority debts. Mark the medium-priority debts with a “2” and the low-priority debts with a “3.” Add up the monthly payments for the items with high priority. At the end of each month, do you have enough to pay everything with high priority? If you don’t, read it over. Change the least important debts you marked with a 1 to medium priority, and keep changing debts until you can pay each month what is high priority. If you can pay everything with high priority, add up the items with medium priority. If you can’t pay both the high priority and medium priority, you may need to change some medium-priority items to low priority. Remember: Some things must go. You can’t afford to pay for everything you’d like to. This doesn’t mean you’re a bad person. It just means you

need to buckle down and tighten up your finances for a while.

Don’t get discouraged if you can’t meet what you think are your medium or even just your high priorities. Chapter 5 will help you negotiate with your creditors so you may be able to reduce your payments or debts. Chapter 6 will help you figure out ways to reduce your expenses or find more money to pay your debts. If you do manage to reduce your payments or debts, or gain increased money to pay them, remember to go back to change your worksheets to reflect your current income and debts.



TIP

Stick to your plan. If you decide to stop paying some lower-priority debts, temporarily or permanently, don’t deviate from your plan just because creditors are breathing down your neck. If you give in to creditors that are trying to collect low-priority debts, you may not have enough money to pay your essential debts. For example, if you pay a few dollars on an old hardware store bill just because its collector is the loudest or most persistent, you may face eviction or have your heat turned off because you don’t have enough money left to pay the rent or utility bill.

Negotiating With Your Creditors

Communicate With Your Creditors.....	55
Rent Payments	59
Mortgage Payments.....	60
Utility and Telephone Bills	62
Car Payments.....	63
Purchase Payments	63
Lease Payments.....	64
Secured Loan Payments	65
Insurance Payments.....	67
Medical, Legal, and Other Service Bills.....	68
Child Support and Alimony Payments	68
Income Taxes.....	69
Student Loan Payments	70
Credit Card Payments	70
If You Want to Keep Your Credit Card.....	70
If You Want to Settle the Debt or Get Rid of the Card.....	71
How the New Credit CARD Act Can Help.....	71
Charge Card Payments.....	71
Making Minimum Payments	72
Getting Help	72
Negotiating When the Creditor Has a Judgment Against You.....	73
Pay Off a Debt for Less Than the Full Amount.....	73
Don't Write Postdated Checks.....	77
Beware of the IRS If You Settle a Debt	79

“Let us never negotiate out of fear, but let us never fear to negotiate.”

—John F. Kennedy

This chapter will help you negotiate with your creditors on debts you can’t pay. You should definitely consider this strategy for essential debts, such as your house and utilities. Once you’ve stabilized your financial situation, you may also want to try to work out a deal with creditors for nonessential debts that you believe you can afford to keep up. If the creditor has turned your debt over to a collection agency, see Chapter 9, which provides information on negotiating with debt collectors. Your negotiation strategies and the governing laws will likely be different when dealing with a collection agency, than when dealing with original creditors.

Especially when the whole economy is going through tough times, creditors may be willing to work with you, realizing that they are better off getting something now, rather than less or nothing later. Unsecured creditors like credit card companies, for example, may be willing to take 20% to 70% less to pay off your delinquent debt because they know you can probably wipe out all or most of that debt in bankruptcy. But don’t forget that unsecured debt is usually your lowest priority. More important is to negotiate with those holding secured loans on your house and car.

Even creditors holding your mortgage or equity loan may be willing to negotiate. In trying to keep up with a flood of foreclosures, some lenders and loan servicers

have taken shortcuts when preparing and processing foreclosure paperwork—and some courts have refused to allow foreclosures to proceed with improper paperwork. Even if the lender can foreclose, they don’t need another vacant house they can’t sell. A lender might waive interest, reduce your payments, let you skip a payment but tack it on at the end, or even reduce the principal amount you owe.

But tread cautiously. The creditor is likely to ask for something in exchange, such as getting a cosigner (who will be liable for the debt if you don’t pay, even if you erase the debt in bankruptcy), waiving the statute of limitations (the number of years the lender has to sue you if you stop making payments—see Chapter 14), paying higher interest, paying for a longer period, giving a security interest in your house or car, or waiving your right to sue for illegal conduct by the creditor in the initial transaction. Agreeing to terms like these could ultimately make your situation worse. If you’re asked to sign a document you haven’t read, you don’t understand, or have concerns about, don’t sign. First, consult with a credit counselor or lawyer.



SKIP AHEAD

Don’t negotiate if you’re going to file for bankruptcy. If you will probably file for bankruptcy before long, contacting your creditors is the last thing you should do. It’s better to figure out first whether bankruptcy may be your best option, and if so, which debts will be wiped out by bankruptcy. Then, work at managing the debts that won’t be wiped out at the same time you do your

bankruptcy planning. There's no point in paying anything on debts just before you file if they will be wiped out by bankruptcy.

Communicate With Your Creditors

The first step to working out a deal with creditors is to keep the lines of communication open. It may surprise you, but creditors often will reduce payments, extend time to pay, drop late fees, and make similar adjustments if they believe you are making an honest effort to deal with your debt problems.

As soon as it becomes clear to you that you're going to have trouble paying your bills, write to your creditors. Explain the problem: accident, job layoff, emergency expense for your child or aged family member, or

unexpected tax bill, for example. Be sure to mention any development that points to an encouraging financial condition: disability benefits beginning soon, job prospects improving, child finishing school, and the like. Also, let the creditor know that you've taken many steps to cut your expenses.

Your success with getting creditors to give you time to pay will depend on the types of debts you have, how far behind you are, and the creditors' policies toward delinquencies.

If you are not yet behind on your bills, be aware that a number of creditors have a ridiculous policy that requires you to default—and, in some cases, become at least 90 days past due—before they will negotiate with you. If any creditor makes this a condition of negotiating, find out from the creditor how you can keep the default out of your credit report.

Tips on Negotiating

- **Identify your bottom line.** If you owe a doctor \$1,100 and are unwilling to pay more than \$600 on the debt over six months' time, don't agree to pay more.
- **Try to identify the creditor's bottom line.** If a bank offers to waive two months' interest as long as you pay the principal on your car loan, that may mean that the bank will waive three or four months of interest. Push it.
- **Bill collectors lie a lot.** If they think you can pay \$100, they will vow that \$100 is the lowest amount they can accept. Don't believe them.
- **Explain your financial problems.** Be bleak, but never lie.
- **Offer a lump sum to pay off the debt.** In tough economic times creditors may settle for a lot less if you can pay in a lump sum. If a creditor will settle for 30% to 70% of the total debt if you pay in a lump sum, but will insist on 100% if you pay over time, try to get the money to pay the reduced amount and settle the matter. Ask that the unpaid debt and negative information in your credit file associated with the debt be removed from your credit file in exchange for the settlement. Creditors may not agree, but if they do, be sure to get written confirmation that the debt will be considered as paid in full when you pay the agreed amount,

Tips on Negotiating (continued)

and that the creditor will submit a Universal Data Form (a standard form creditors use to report to credit reporting agencies) deleting the “account/trade line” from your credit report. (See Chapters 9 and 17 for details.)

- **Offer a payment plan to reduce your payments and the total you owe.** If you can’t pay a lump sum to settle the debt, but the creditor agrees to put you on a new schedule for repaying the debt, consider asking the creditor to “reage” your account, which makes the current month the first repayment month and stops showing late payments in your credit report. Sometimes, the creditor won’t reage the account until you make two or three monthly payments first. But think carefully before asking a creditor to reage the account, especially if it’s been reported as delinquent for some time. Reaging means that the account will appear on your credit report for seven years after the repayment date, rather than seven years after the earlier delinquency date. Some consumer advocates argue that reaging an account is a bad idea for this reason. On the other hand, some debt management plans favor reaging because the account appears as current on the credit report. (See Chapters 9 “How to Handle Time-Barred or ‘Zombie’ Debts” and 17 for details on credit repair.)
- **Don’t split the difference.** If you offer a low amount to settle a debt and the creditor proposes that you split the difference between the creditor’s higher demand and your offer, don’t agree to it. Treat the split-the-difference

number as a new top and propose an amount between that and your original offer.

- **Consider mentioning bankruptcy.** If bankruptcy is an option you are considering, you may want to mention that you may have no option but to file for bankruptcy if the creditor refuses to make concessions. You might find that an unreasonable creditor is willing to compromise.

But think carefully before doing this.

In most cases, a “mentioned bankruptcy” notation will immediately be added to your account file with that creditor. If you incur any additional debt after that date—even with a different creditor—you will have a very difficult time eliminating that debt in bankruptcy if you do eventually file. The creditor will argue that once you mentioned bankruptcy, you had no intention of repaying your bills and that all debts you incurred after that date should not be wiped out. And a bankruptcy judge is likely to agree.

If you don’t feel comfortable negotiating—for example, you hate bargaining at flea markets and would rather sell your used car to a dealer than find a buyer yourself—ask a friend or relative to negotiate on your behalf. As long as your negotiator knows and will keep to your bottom line, it will be hard for the creditor to shame or guilt the negotiator into agreeing that you will pay more. Some creditors are reluctant to negotiate with anyone other than you or your lawyer. If need be, prepare a power of attorney giving your negotiator the right to handle your debts on your behalf.

Sample Letter to Creditors

August 19, 20xx

Collections Department
Big Bank of Bismarck
37 Charles Street
Bismarck, ND 77777

Re: Amy and Robert Grange Account 411-900-LOAN

To Whom It May Concern:

On June 5, 20xx, your bank granted us a three-year \$3,300 personal loan. Our agreement requires us to pay you \$125 per month, and we have diligently made those payments since July 1, 20xx.

We now, however, face several emergencies. Robert had a heart attack last April and has been out of work ever since. His doctors do not believe that he'll be able to work again until this November. On top of that, Amy's company filed for bankruptcy and laid her off last week. She will receive unemployment and is looking for work. Unfortunately, though, many industries in our town have closed down, and jobs are few. Amy may be able to work in her uncle's office, but it's a 90-minute drive each way and she can't afford the time while Robert is recovering.

We cannot pay you more than \$20 a month right now. We expect to resume the full \$125-per-month payments this November. We ask that you please accept our \$20 a month until then, and just add the balance we miss to the end of our loan and extend it the few months necessary.

Thank you for your understanding and help. If we do not hear from you within 20 days, we will assume that this arrangement is acceptable.

Sincerely,

Amy Grange
Robert Grange

Amy and Robert Grange
701-555-8388

cc: Leonard O'Brien, President, Big Bank of Bismarck

Sample Letter to Creditor Confirming Agreement to Reduce Payments Temporarily

August 19, 20xx

Sally Brown

Collections Department

Big Bank of Bismarck

37 Charles Street

Bismarck, ND 77777

Re: Amy and Robert Grange Account 411-900-LOAN

Dear Ms. Brown:

This letter confirms our agreement on August 18, 20xx.

On June 5, 20xx, your bank granted us a three-year \$3,300 personal loan. Our original agreement requires us to pay you \$125 per month, and we have diligently made those payments since July 1, 20xx.

As we explained in our conversation with you, we now, however, face several emergencies. Robert had a heart attack last April and has been out of work ever since. His doctors do not believe that he'll be able to work again until sometime in November. On top of that, Amy's company filed for bankruptcy and laid her off last week. She will receive unemployment and is looking for work. Unfortunately, though, many industries in our town have closed down, and jobs are few. Amy may be able to work in her uncle's office, but it's a 90-minute drive each way and she can't afford the time while Robert is recovering.

We explained that we cannot pay you more than \$20 a month right now, and that we expect to resume the full \$125-per-month payments next February. You agreed that you will accept our \$20 a month as a satisfactory monthly payment until then, not charge us any late fees on those monthly payments because we are not sending the full \$125, and just add the balance we miss to the end of our loan and extend it the few months necessary. We understand that that will extend our loan payments of \$125 for four months, through October 5, 20xx, with the remaining balance of \$20 due on November 5, 20xx. If this is not your understanding, please contact me at once.

Thank you for your understanding and help.

Sincerely,

Amy Grange

Robert Grange

Amy and Robert Grange 701-555-8388

cc: Leonard O'Brien, President, Big Bank of Bismarck

Don't give up if the creditor does not accept your first offer. Be persistent. As time goes on and you are still unable to pay, the creditor may be more willing to consider your offers.

In the meantime, for each debt, keep a written log of your negotiation efforts. Record how much you owe; the date, time, and substance of each conversation you have regarding the debt; the person with whom you communicate; and each time the creditor contacts you. It's best to confirm any offer you make in writing and keep a copy. It is essential to get written confirmation of any agreement you reach. Sample letters in this Chapter show you how.

It's true that some creditors simply will not negotiate with debtors. But it is still in your best interest to try. The following sections give you a general idea of what you can expect.

Above is a sample letter you can modify and send to your creditors to request a reduction, extension, or other repayment program. It may help to send a copy to the company president.



TIP

Find the person with authority.

When you call a creditor's customer service department, work your way up the chain until you find someone who can make a decision on your proposal. Follow up a phone conversation with a confirming letter, stating whom you talked to and what agreement you reached. Keep a copy of your letter. See the sample above.

Rent Payments

It never hurts to ask your landlord to reduce your monthly rent. If the landlord knows it will be difficult to rent your place, the landlord may agree to accept a partial payment now and the rest later, or might temporarily lower your rent, rather than have to evict you. The landlord might agree to let you pay a little bit each month to make up any back rent you owe.

If your landlord agrees to a rent reduction or lets you make up past-due payments, send the landlord a letter confirming the arrangement by certified mail, return receipt requested. (See sample letter, below.) Be sure to keep a copy for yourself. Once the understanding is written down, the landlord will have a hard time evicting you for not paying the rent, as long as you make the payments under your new agreement.

If you decide to move but have months remaining on a lease, your landlord might try to sue you for the remaining months' rent. Legally, however, in most states the landlord has a duty to use reasonable efforts to rent the place to minimize the loss. If the landlord can't rent it despite making reasonable efforts, you will be on the hook for the balance of the rent. If you advanced one or two months' rent or paid a cleaning or security deposit when you moved in, the landlord should put that money not reasonably needed for cleaning or repair toward any rent you owe.

Sample Letter to Landlord

September 22, 20xx

Frank O'Neill

1556 North Lakefront

Minneapolis, MN 67890

Dear Frank:

Thanks for being so understanding about my being laid off. This letter is to confirm the telephone conversation we had yesterday.

My lease requires that I pay rent of \$750 per month. You agreed to reduce my rent to \$600 per month, beginning October 1, and lasting until I find another job, but not to exceed three months. That is, even if I haven't found a new job, my rent will go back to \$750 per month on January 1. If this is not your understanding, please contact me at once.

Thank you again for your understanding and help. As I mentioned on the phone, I hope to have another job shortly, and I am following all leads in order to secure employment.

Sincerely,

Abigail Landsberg

Abigail Landsberg

Mortgage Payments

We cover mortgage payments in Chapter 8. For now, we'll just mention that the possibilities for dealing with mortgage payments are wider than they have ever been. Federal government programs have been set up to encourage lenders to help homeowners refinance, modify their mortgages, or give homeowners assistance on short sales (sales for less than the amount of the loan), or if they decide to just turn over the property to the lender (deed in lieu). Tax changes give borrowers a break on the "income" from not having to pay the full amount of the mortgage after a short sale, deed in lieu, or foreclosure.

While most reports suggest lenders have been slow to work with borrowers in the federal programs, we explain how to maximize your possibilities in these programs. The flood of foreclosures has also opened another opportunity for homeowners. Some lenders overwhelmed with foreclosures have turned to "robosigners" to complete paperwork, resulting in faulty paperwork and further delays before foreclosure proceeds. In short, even if you are "upside down" on your home loan, you still have options to help you stay in your home or leave with some savings so you can find other housing.

Special Protections for Active Servicemembers

The Servicemembers Civil Relief Act or SCRA (50 U.S.C. App. § 501 and following) gives servicemembers on active duty, including members of the National Guard called up for active duty, and, in most cases, their dependents, a number of special rights. Most do not happen automatically, however, so it is up to you to assert these rights. These rights include:

- Real estate foreclosure proceedings can be stayed and the terms of a servicemember's mortgage can be adjusted during active duty and the 90 days following. A court may also establish your equity in the property and require you be paid that amount on foreclosure.
- Civil court proceedings, including evictions if the monthly rental is under the current cap of \$2,958.53 for 2010 and 2011, may be delayed up to 90 days or more while you are on active duty, and for 90 days afterwards. Even if a creditor has a judgment, you may be able to delay efforts to enforce it. Courts also have a lot of leeway to fashion a more equitable remedy in eviction cases.
- A servicemember may terminate a lease on a vehicle if he or she leased it before entering military service and then went on active duty for 180 days or more. A servicemember who signs a lease while on active duty who is later reassigned outside the continental United States or reassigned elsewhere from a U.S. possession outside the continental United States, or who is sent on temporary duty for 180 days or longer, also can terminate a vehicle lease.

The lessor cannot charge an early termination penalty, but can charge for excess mileage and wear and tear.

- A servicemember may terminate a lease on a home or office if he or she signed the lease before entering military service and then went on active duty. A servicemember also can terminate a lease signed when he or she was on active duty if the servicemember is reassigned or deployed for 90 days or more.
- The interest rate on credit cards, mortgages, bank loans, guaranteed student loans under FFEL (see Chapter 12), vehicle financing, and the like is reduced to 6% annually for the entire time the servicemember is on active duty. Payments must be reduced accordingly. This reduction applies only to obligations incurred by the servicemember, or the member and spouse jointly, before the member went on active duty. The creditor must forgive any interest that exceeds 6% for the entire time of active duty.
- A creditor's right to rescind or terminate a servicemember's installment contract for the purchase or lease of real or personal property (including vehicles) due to a breach of the contract's terms (including defaulting on payments) is limited if the first payment was made before the servicemember went on active duty and the breach happened before or during active duty. Additionally, the property cannot be repossessed without a court order.
- Servicemembers have protections against default judgments being entered against them in civil actions.

Special Protections for Active Servicemembers (continued)

- The military has classified tax refund anticipation loans (RALs), auto title loans (if the creditor takes the vehicle's title as security and the loan is for 181 days or less, but not used to buy a car), and payday loans as predatory loans and limits the annual percentage rate on these loans to 36% for active duty servicemembers or their dependents. This means, for example, that now a payday lender cannot charge a servicemember more than \$1.38 in interest on a \$100 loan for two weeks. If you were charged a higher rate on an RAL, auto title loan, or payday loan, you should be able

to get the rate reduced to 36%. Because a higher rate is a violation of law, you may be able to get the lender to agree to make things right by reducing the cost to below 36% or to eliminate all charges entirely.

- Student loans can be deferred while on active duty (see Chapter 12).

Servicemembers who want to take advantage of these rights must follow specified steps and procedures, and there are exceptions and limitations. For more information, go to the U.S. Armed Forces Legal Assistance website at <http://legalassistance.law.af.mil> or contact your military legal assistance lawyer.

Utility and Telephone Bills

If you miss one month's utility bill—including a bill for heating oil or gas deliveries—you probably won't hear from the company, unless you have a poor payment history. If you ignore a few past-due notices, however, the company will threaten to cut off your service. Call the company before the threats become dire. Most utility companies will let you get two or three months behind as long as you tell them when you'll be able to make up what you owe. If your service has been shut off, the company will most likely require you to make a security deposit—usually for about three times the average of your monthly bill—before it reconnects you. The deposit rates following disconnects are regulated in some states. You may want to

call a Legal Aid or Legal Services office (see Chapter 18) to learn about your state's law.

Many utility companies offer reduced rates and payment plans to elderly and low-income people. In addition, the federal Low Income Home Energy Assistance Program (LIHEAP), which is state run, helps low-income customers pay their utility bills. Don't assume you won't qualify as low-income. To find out if you qualify and where to apply, call the utility company and ask; contact the National Energy Assistance Referral (NEAR) project at 866-674-6327 or energy@ncat.org; or contact your state's LIHEAP office for assistance (you can find that office on the LIHEAP website at www.acf.hhs.gov, look for "energy assistance"). If you do, you'll be able to get future bills reduced—and may be able to spread out payments on past bills.

Some consumers fall behind on energy bills during periods when they use a lot of energy and incur high bills (winter in the north, for example). Many energy utilities offer programs that average your periods of high and low usage and allow you to pay a uniform monthly payment all year long.

Most northern states prohibit termination of heat-related utilities during the winter. Other states protect households with elderly or disabled residents, and occasionally households with infants. Usually, you must show financial hardship to qualify. But, even if you qualify for a prohibition against utility shutoff, you'll still owe the bill.

Finally, don't overlook the cost savings that come with conserving energy. Local utility companies offer utility conservation assistance programs, often at no cost. These measures can often cut your bill by as much as one-third to one-half.

Car Payments

Your options for handling car payments depend on whether you are buying or leasing your vehicle.

Purchase Payments

If you expect you'll have trouble making your car payments for several months, your best bet is to sell the car, pay off the lender, and use whatever is left to either pay your other debts or buy a reliable used car.

If you want to hold onto your car and you miss a payment, immediately call the lender and speak to someone in the customer

Negotiate Your Phone Bill

Of all utility bills, the phone bill is often the most difficult to understand. Charges may be posted by at least three separate companies: your local carrier, long distance carrier, and Internet service provider. You might also have special features billed to you, such as call waiting or voice mail.

Check your phone bill to see which charges, if unpaid, will cause your local services to be disconnected, and which ones won't affect your local service. The part of your bill for local service is a higher priority bill than the charges for other services. Also, check to see if you have been paying for services you did not order. If you have, you may be able to negotiate not only to have them removed from future bills, but also to get money back for prior unauthorized charges. (See Chapter 3, "You've Been 'Slammed' by Your Phone Company.")

You may also be able to reduce the cost of phone service by eliminating unneeded phones or services or using a prepaid cell phone plan. For tips on how to reduce phone costs, see Chapter 6.

service or collections department. Don't delay. Cars are more quickly repossessed than any other type of property. One reason for this is that the creditor doesn't have to get a court judgment before seizing the car. (See Chapter 7.) Another reason is that cars lose value fast—the creditor who has to auction one off wants the largest possible return.

Also, cars have been known to disappear before they can be repossessed.

On the other hand, some creditors may not be eager to repossess your vehicle. According to one industry consultant, creditors lose about \$8,000 per car repossession. So, if you present a convincing argument that your situation is temporary, the lender might grant you an extension, meaning the delinquent payment can be paid at the end of your loan period. The lender probably won't grant an extension unless you've made at least six payments. Also, most lenders charge a fee for granting an extension and don't grant more than one a year. Fees for extending car loans vary tremendously. Some lenders charge a flat fee, such as \$25. Others charge a percentage (usually 1%) of the outstanding balance. Others charge one month's worth of interest. Another option is to ask if the lender will change your monthly payment date so that it corresponds better to when you receive your income. Some lenders that agree to this might also waive late fees or reduce the interest charged, which would lower your payment amount.

In a third scenario, the lender may offer to rewrite the loan to reduce the monthly payments. This means, however, that you'll have to pay for a longer time period and you'll have to pay more total interest. Make sure that getting a lower monthly payment doesn't require you to take out a larger total loan. Try to avoid loans that have a prepayment penalty or that include interest calculated in any way other than the simple interest method. To get an idea of what your lender may be willing to do, you can review

information about your lender on Bankrate.com. Then call your lender and ask.

Lease Payments

If you can't afford your automobile lease payments, your first step is to review your lease agreement. If your total obligation under the lease is less than \$25,000 and the lease term exceeds four months (many car leases meet these two requirements), the federal Consumer Leasing Act (15 U.S.C. §§ 1667-1677f, 12 C.F.R. § 213) requires that consumer vehicle leases disclose the following information:

- the amount due (including an itemization) at the time the lease is signed
- payment schedule and total payments
- payment calculation
- notice that the charge for early termination of the lease may be substantial, up to several thousand dollars
- the conditions under which the lease may be terminated early
- the early termination fee or a description of how the fee is calculated
- the mileage limitation and the charge for excess miles, if any, and
- vehicle wear and tear standards, which must be reasonable.

The Act requires other disclosures as well. In addition, many states impose extra requirements.

If you want to cancel your lease, look carefully at the provisions in your contract describing what happens if you default and how you can terminate the lease early. Many

of these provisions include claims that you'll owe a very large sum of money or complex formulas that are difficult to understand. Ending a lease early is expensive—you can expect the early termination fee to be hefty. But if the fee seems way out of line, you may be able to get the lessor to agree to some kind of reduction.

Look in your lease agreement for the explanation of how the early termination fee is calculated. Under the federal Consumer Leasing Act, the explanation must be “clear and conspicuous” and the amount must be “reasonable.” Also, ask the lessor to confirm exactly how much you will have to pay to terminate the lease early in your particular circumstances. If you think the amount is not reasonable, as is required, use that in your negotiation.

Secured Loan Payments

If a personal loan or store agreement is secured—for example, you borrowed money to purchase a refrigerator or couch and you pledged it as security for your repayment—the lender probably won't reduce what you owe. Instead, the lender may threaten to send a truck to pick up the property if you don't make reasonable payments.

But few lenders take personal property other than vehicles. The resale value of used property is low. The lender is not in the used furniture business and doesn't want your dining room table or stereo. Almost always, the lender values the debt—even if it is hard to collect—more than the property. Also, the lender can't get into your house

to get the property without a court order or your permission. Few lenders ever go to the expense of getting a court order. This means you have the upper hand in the negotiation.

The lender may extend your loan or rewrite it to reduce the monthly payments. Be prepared to discuss your financial situation.

Can you just give back the collateral and call it even? If you don't need or want the collateral, you can offer to give it back to the creditor or collection agency. They don't have to take it, however, and probably won't if the item has substantially decreased in value or is hard to sell.

Even if the creditor or collection agency takes the property back, in most states you'll be liable for the difference between what you owe and what the creditor is able to sell the property for. This difference is called a deficiency and, as explained in Chapter 7, is often reason enough to avoid having property repossessed.

If you can no longer afford to keep the property, your best strategy in many cases is to offer to give it back in exchange for a written agreement waiving any deficiency. See the sample letter, below. If the creditor refuses, you may be better off trying to sell the item yourself and using the proceeds to pay your debts.

Exemptions won't help you. Chapter 16 covers exempt property—the property your creditors, including collection agencies, can't take, even if you file for bankruptcy or get sued. There's one major exception to exempt property: collateral for a secured debt. So, for example, if you received a loan to buy a car,

Sample Letter Offering to Give Back Secured Property in Exchange for a Written Agreement Waiving Deficiency

April 18, 20xx

Collections Department

June's Appliance Store

5151 South Olvera Place

Santa Fe, NM 70804

Re: Martina Smith

Account No. 1294-444-38RD (microwave oven)

To Whom It May Concern:

I've received your notice indicating that my account is overdue.

I would like to pay, but I have lost my job as a cashier and have not been able to find another one in the four months I have been looking. Most jobs require additional training I do not have and cannot afford to get. I have been doing baby sitting in my home and some cleaning jobs I am able to find, but am not able to earn much this way.

I do not know when I will be able to resume payments on the microwave oven I purchased from June's. I have already paid about half of its cost. It is still in good condition. I am willing to return it to you, if you agree not to charge me any more for it, that is, to waive any deficiency. If you agree, please sign below and return a signed copy of this letter to me. When I have received your signed copy, I will call to arrange for you to pick up the microwave.

Thank you for your consideration in this matter. If you wish to speak to me, please feel free to call me at my home at 505-555-9333.

Sincerely,

Martina Smith

Martina Smith

June's Appliance Store agrees in exchange for receiving the microwave oven and the payments already made on account number 1294-444-38RD, to waive any deficiency balance on this account.

Name: _____

Title: _____

Date: _____

Signature: _____

most likely you signed a document agreeing that the car would be security for the loan. You can't keep a creditor from repossessing the collateral even if it would otherwise be exempt.

Insurance Payments

You may consider your medical, homeowners', or auto insurance payments to be fairly essential debts. At the same time, your life or disability insurance payments probably aren't, unless you or other members of your family are very, very ill.

Most policies have 30-day grace periods—that is, if your payment is due on the tenth of the month and you don't pay until the ninth of the following month, you won't lose your coverage. A few companies may let you get away with 60 days, but don't count on it. After 60 days, your policy is sure to lapse.

If you want to keep your insurance coverage, contact your insurance company. Your insurance agent probably can't reduce your premium payments or spread out back payments over a few months. But you can reduce the amount of your coverage and increase your deductibles, reducing the overall amount you pay, including the premium payments. This can usually be done easily for auto, medical, dental, renters', life, and disability insurance.

It will be harder to reduce coverage for homeowners' insurance, because the lender won't want your house to be underinsured. But you can choose a higher deductible.

If you have a life insurance policy with a cash value that you really want to keep, you

usually can apply that money toward your premium payments. And if the cash value is large enough, consider using the money for your debts. You can ask the company to use the cash reserves as a loan. Your policy's cash value won't decrease, but you are theoretically required to repay the money. If you don't repay it, when you die the proceeds your beneficiaries receive will be reduced by what you borrowed.

Another way to keep life insurance coverage but reduce the payments is to convert a whole or universal policy (relatively high premiums and a cash value buildup) into a term policy (low premiums and no cash value). You may lose a little of the existing cash value as a conversion fee, but if you believe life insurance coverage is essential, losing a few dollars may be worth it in exchange for getting a policy that will cost far less to maintain.

If your insurance policy—life or otherwise—has lapsed, and your financial picture is improving, many insurance companies will let you reinstate your policy if you pay up what you owe within 60 days of when the premium payment first became due. You may also have to pay interest on your back premiums, usually between 5% and 10%. After 60 days, the company will probably make you reapply for coverage. If your risk factors have increased since you originally took out the insurance—for example, you took out auto insurance two years ago and have since had a car accident and a moving violation, and your insurance just lapsed—you may be denied coverage or offered coverage only at a higher rate.

Medical, Legal, and Other Service Bills

Critics of hospital billing argue that the vast majority of hospital bills contain overcharges, particularly if you are uninsured. Before assuming that your bill is correct, review it carefully and be sure that you understand and agree with every charge. With hospital bills and lawyers' bills, in particular, ask for specific itemization if the bill gives only broad categories. And if the bill is filled with indecipherable codes, ask someone in the billing office to explain what every code means.

Once you understand what each charge is, look for mistakes, such as duplicate charges, charges based on operating room use for longer than you were there, daily charges for days you were not hospitalized, and charges for procedures or medications you either did not receive or that are billed for more expensive ones than you did receive. Many doctors, dentists, lawyers, and accountants will accept partial payments, reduce the total bill, drop interest or late fees, and delay sending bills to collection agencies if you clearly communicate how difficult your financial problems are and try to get their sympathy. Some doctors, especially, won't spend too much effort in collecting the outstanding bills of longtime patients who suddenly find themselves unable to pay.

If your insurance will eventually cover all or most of your medical bill, but the medical provider is pursuing you because the insurer hasn't paid yet, gather together evidence of:

- your submission of the bill to your insurance company, and

- your insurance company's coverage for the specific medical care you received.

Armed with this information, call the doctor or hospital's collections department and ask for an appointment. At the meeting, provide the collector with copies of your documentation and plead with the person to cease collection efforts against you. Let the collections representative know that your medical condition may worsen if the stress of the collection calls and letters doesn't stop (if this is in fact true). If you get nowhere with the collections representative, make an appointment to see the department supervisor. Also, if the bill is from a hospital, see if the facility has an ombudsman or patient's advocate. Such a person works to help resolve disputes between patients and the hospital. But remember: If you haven't yet paid the amount of any deductible, you still owe it. The insurance company won't pay it, and the doctor or hospital will continue to come after you.

Be leery if you're asked to use a credit card for medical bills. Some credit card companies are trying to get doctors and dentists to offer you a choice of paying cash or paying with a credit card. You're better off owing the doctor directly instead of putting your medical charges on a credit card. You have more negotiating leverage with the doctor than with a large credit card company.

Child Support and Alimony Payments

No matter how difficult your financial situation, you won't be relieved of your duty

to pay court-ordered child support unless you take affirmative steps to legally reduce your support obligation. Because a court ordered you to pay, only a court can order a change in the amount you must pay. Thus, when your income drops, immediately file the necessary paperwork (usually called a motion, petition, or order to show cause) with the court, asking that your future child support payments be reduced, at least temporarily. Alimony is different because the court doesn't always retain the power to change that type of support, the way it does with child support. If you have an obligation to pay alimony, it's likely that your final divorce judgment or settlement agreement defines when that obligation ends. If it doesn't say that losing your job or income is a reason for support to end or change, then generally, you're stuck paying until the obligation is done.

The court cannot retroactively reduce child support. The court can set up a payment schedule for you to get current, but if you miss payments before you ask for a reduction, the court can't erase your debt. (See Chapter 13 for information on reducing child support or alimony.)

Income Taxes

If you cannot pay the IRS taxes you owe, the IRS will encourage you to charge the extra amount on your credit card. This may be a bad idea, because the interest on your credit card will probably be a lot higher than the interest and penalties the IRS will charge if you reach an agreement with them.

Remember, if you owe the IRS up to \$10,000 and you have not been in tax trouble recently, you are entitled to an installment agreement to pay your taxes. Interest and a penalty are added to your tax debt each month. You can have up to three years to pay what you owe. (See Chapter 4, "Unpaid taxes," and IRS Form 9465.) If you don't meet these criteria, you may still be able to negotiate an installment agreement, but the IRS gets to decide whether to give you one.

If you cannot afford an installment agreement, you can make an "offer in compromise." This means that you make a lump sum offer to the IRS to settle what you owe. The IRS will accept an offer in compromise in only three situations:

- There's a doubt that the assessed tax is correct.
- You may not have the ability to pay the full amount owed.
- You could pay the full amount, but doing so would cause you economic hardship.

You must also meet all of the following:

- You have filed all required federal tax returns before you apply for a compromise.
- You are not in bankruptcy. (If you are in bankruptcy, any compromise would need to be negotiated in connection with the bankruptcy.)
- You submit with your offer an application fee (currently \$150) and a payment equal to either your first proposed payment (if you propose periodic payments) or 20% of your offer amount (if you propose a cash or lump sum offer) or you qualify for

the low-income exception and submit Form 656A.

- You submit required financial information.

(See IRS Form 656, *Offer in Compromise*, for additional information (available at www.irs.gov).)

Finally, you may be able to eliminate, reduce, or spread out your IRS debt by filing for bankruptcy. (Bankruptcy is covered in Chapter 15.)



RESOURCE

For a complete discussion of your options with the IRS, see [Stand Up to the IRS](#), by Frederick W. Daily (Nolo).

Student Loan Payments

We cover student loan debts in Chapter 12. For now, we'll just mention your basic options. You may be eligible to have your loan canceled in limited circumstances, such as if your school closed. Generally, unless you are more than 270 days behind on your payments, you can probably get those payments postponed if you are out of work, disabled, suffering from an economic hardship, or, in certain circumstances, serving in the military. If you are more than 270 days behind but can make a few timely reduced payments and can afford to pay something less than the obliged amount, you can probably negotiate a new repayment plan for lower payments over a longer period of time. Alternatively, you may become eligible for new student loans and

get yourself out of default by negotiating a repayment plan that's both reasonable and affordable, based on your financial situation.

Credit Card Payments

If you don't have enough money to keep current on all your debts, remember that credit card debt is usually not a top priority for repayment because most credit cards are unsecured. However, if you have a secured credit card, especially if it is secured by your home, you should treat it like other important secured debts.

For unsecured credit cards, recent changes in the law and the recession have dramatically improved your ability to negotiate favorable terms with credit card companies. Here are some options, depending on whether you want to keep or get rid of your card.

If You Want to Keep Your Credit Card

If you want to keep your credit card, you may be able to get a great deal from your credit card company. According to an August 2009 post in the Consumer Reports Money Blog, credit card companies are lowering interest rates, reducing monthly payments, eliminating fees, referring customers to debt management programs, and even reducing balances owed. Call your credit card company and ask for an interest rate reduction (which will also lower your payments), elimination of fees you have been charged for late payments or over-the-limit charges, smaller monthly minimum

payments (if you need that for a short time), or even a reduction in the balance you owe.

If You Want to Settle the Debt or Get Rid of the Card

You may be able to settle your credit card debt for a third to half of what you owe. Credit card companies will ordinarily not offer such a deal until you are several months late. Now however, some are reaching that point after three, rather than after five or six, months. Usually, the company will require you to pay the settled upon amount in one payment or several payments. If you are already struggling with debt, it might be difficult to get a lump sum large enough to settle.

Alternatively, if you can't pay anything on your credit card and have decided that keeping the card isn't essential, one option is to stop making payments. Of course, there will be negative consequences. You may lose your credit privileges. You may be sued, but that will take some time. Your credit report will make you look like a riskier borrower, so other creditors will likely not offer you the best interest rates on new credit, if they offer you credit at all. And, of course, missed payments will bring down your credit score. However, the hit to your credit may be less severe than if you lose your home or car.

How the New Credit CARD Act Can Help

In 2009, Congress passed, and the president signed a law that stops many credit card traps consumers had been complaining about for

years. For the most part, the new (as well as the old) protections only apply to consumer credit cards and not to business credit cards, credit cards secured by your home, or debit cards. The new law is referred to as the “CARD Act” or the “Credit Card Act.”

When you are negotiating with your credit card company, it's important to know what it can and cannot do. For example, card issuers can no longer raise the interest rate on the outstanding balance on its card just because you didn't make the minimum payment on *another* credit card. The CARD Act also places limitations on the ability of card issuers to raise your interest rate during the first year you own the card, and require advance notice (often 45 days) before raising your rate in other circumstances. And if you decide to close a credit card account, under certain circumstances the card issuer cannot demand that you pay the entire balance at once. To learn about the details of these and other rules, read Chapter 10.

Charge Card Payments

If you can't pay a charge card bill—such as an American Express Green or Zync Card—you must approach the creditor differently. Charge cards are much less common than credit cards. Normally, you are required to pay off your entire charge card balance when your bill arrives. If you don't, you'll owe a late fee of about \$35. If you don't pay by the second month, you'll be charged interest in the neighborhood of 36%. Call the charge card company and ask that you be given a monthly repayment plan for paying off the bill. Offer to pay only what you can

afford. The company usually doesn't report this arrangement to credit reporting agencies if you pay the monthly amount you agreed to.

Making Minimum Payments

If you opt to pay only the minimum (or less) each month, you'll need years to get out of debt. For example, if you charge \$1,000 on a 17% credit card and pay it off by making the minimum payments of 2% of the balance each month, you'll take more than seven years to pay off the loan and will end up paying more than \$1,760. If the balance is \$8,000, it will take over seven years and cost over \$8,700 to repay.

As of February 22, 2010, the federal CARD Act requires credit card statements to show you how long it will take to pay off your balance if you pay just the minimum payment (and don't add any more charges) and the total amount you would pay over that period of time. Your statement also must show the amount your monthly payments would have to be in order to pay off the balance in three years. You can also check out [Nolo's credit card repayment calculator](http://www.nolo.com), at www.nolo.com, to find out how long it will take you to pay off your balance (and your total cost) for various payment amounts. To learn more about credit card statement disclosure requirements, see Chapter 10.

It might make sense to make minimum payments in certain circumstances. For example, if you have more than one credit card, consider making minimum payments on all of your cards except one, and then put any extra cash into paying off completely the outstanding balance on that one card.

Once you've paid that balance off, start with another card, and so on, until you pay off the outstanding balances on all your cards.

If you can't make even the minimum payments on all your cards, and you haven't been able to get the company to make substantial reductions in the balance, you could try to negotiate temporary reductions in the minimum payment (or interest rate, which will reduce the minimum payment somewhat) on as many cards as you can. Using the Nolo credit card repayment calculator, you can be realistic in figuring out how long it would take you to pay off one card with the extra money saved from reduced minimum payments on the other cards. Then propose that time period for a temporary reduction in minimum payments to the other credit card companies. With the company you plan to pay off first, you may have different balances with different interest rates. Under the CARD Act, any extra money you pay above the minimum payment will automatically go to the balance with the highest interest rate so you can pay it off first. (See Chapter 10 for more on this.)

Getting Help

If you are unsuccessful in negotiating lower interest payments, a lower balance, or reductions in fees or interest on your own or feel that you could use some help, try contacting a nonprofit credit counseling agency such as Consumer Credit Counseling Services. (See Chapter 19 for information on choosing a credit counseling agency.)

In addition, the CARD Act requires credit card statements to include a toll-free number

where you can get contacts for three (if available) credit counseling agencies serving your area. Because contacts can only be provided for agencies approved by the U.S. Chapter 13 Trustee, you have some hope that the agencies will be legitimate. Even so, you should check out carefully any agencies you contact, as it often takes a while for a government office to find out that a company is engaging in fraudulent or abusive business practices.



RELATED TOPIC

Send a letter confirming your agreement. Once you've had an initial discussion with a creditor, you should write to confirm the agreement you reached. Ask the creditor to agree to either remove negative information about the debt from your credit report or to "reage" the debt—to start it over, so your initial repayment is shown as your first payment on the debt. This way, your account won't show any past late payments, although you may owe for a longer period of time. Before you decide whether to ask for the account to be reaged, review "How to Handle Time-Barred or 'Zombie' Debts" in Chapter 9, and "Statute of Limitations" in Chapter 14. There are some disadvantages to reaging an account.

Negotiating When the Creditor Has a Judgment Against You

If you don't pay your debts, your creditors may sue you. Once they have a judgment against you, they also have an expanded arsenal of collection techniques. For

example, a creditor can put a lien on your house, empty your bank accounts, or attach a portion of your wages. An otherwise nonessential debt can quickly become essential when it's turned into a judgment, so ideally, you'll avoid getting a judgment against you. But even if there is a judgment against you, you can still negotiate. Make an offer to the creditor, pointing out that it would save the creditor the trouble and expense of enforcing the judgment. Chapter 14 discusses what to do if you are sued.

Pay Off a Debt for Less Than the Full Amount

If you owe a creditor \$750, you may be tempted to send a check for \$450 and write on the check that "cashing this check constitutes payment in full." Almost all states have adopted laws that allow you to send partial payment as "payment in full," even if the creditor hasn't agreed to it, but only if the amount of the claim is uncertain, or you have a good-faith dispute over the amount of the claim and you're offering the check in good faith as full satisfaction of the claim. This is a way to resolve a disputed bill informally. It is not meant as a way to "pay pennies on the dollar" for a debt you know you owe.

If you dispute the amount owed but haven't reached an agreement with the creditor to pay less, write a letter with your check like the sample shown below (California residents should model their letters on the samples specifically for them).

If you *don't* dispute the amount you owe and you want the creditor to accept less as

Sample Letter: Cashing Check Constitutes Payment in Full on Disputed Amount (Outside of California)

[Send a letter like this to the person, office, or place designated by the creditor for communications regarding disputed debts—or to the proper collection agent if you are no longer dealing with the creditor company itself. Don't forget to write the statement at the end of this letter conspicuously on the check.]

January 5, 20xx

Herman's Rentals

345 Main Street

Anytown, NV

Attn: Customer Service

Name on account: Jason Butler

Invoice number: 456A

To Whom It May Concern:

Regarding the above-referenced invoice, I dispute the amount you claim that I owe you. For the past three months, I have received bills from you stating that I owe \$300 for a three-day rental of your New-Finish-Now hardwood floor finisher. You will recall that I have spoken to you about this bill several times during the last three months.

As you will recall, I rented the finisher on a Friday evening intending to return it on Sunday, for a total of two days' rental. When I came to your store on Sunday, it was closed and I could not return the finisher until Monday. None of Herman's employees told me that the store would be closed on Sunday. I believe that I owe you no more than \$200, and it is obvious that there is a good-faith dispute over the amount of this bill.

In a good-faith effort to satisfy this debt, I have enclosed a check for \$200 to cover the balance of the account. Cashing this check constitutes payment in full and releases all claims you may have related to this account.

Sincerely,

Jason Butler

Jason Butler

33 Shady Lane

Anytown, CA

123-456-7891

Enclosed: Check stating on front: "Cashing this check constitutes payment in full and releases all claims related to Invoice 456A, Jason Butler."

Sample Letter: Cashing Check Constitutes Payment in Full on Disputed Amount—First Letter (California)

[Send a letter like this to the person, office, or place designated by the creditor for communications regarding disputed debts—or to the proper collection agent if you are no longer dealing with the creditor company itself.]

January 5, 20xx

Herman's Rentals

345 Main Street

Anytown, CA

Attn: Customer Service

Name on account: Jason Butler

Invoice number: 456A

To Whom It May Concern:

Regarding the above-referenced invoice, I dispute the amount you claim that I owe you. For the past three months, I have received bills from you stating that I owe \$300 for a three-day rental of your New-Finish-Now hardwood floor finisher. You will recall that I have spoken to you about this bill several times during the last three months.

As you will recall, I rented the finisher on a Friday evening intending to return it on Sunday, for a total of two days' rental. When I came to your store on Sunday, it was closed and I could not return the finisher until Monday. None of Herman's employees told me that the store would be closed on Sunday. I believe that I owe you no more than \$200, and it is obvious that there is a good-faith dispute over the amount of this bill.

In a good-faith effort to satisfy this debt, I will send you a check for \$200 with a restrictive endorsement. If you cash that check, it will constitute an accord and satisfaction. In other words, you will receive from me a check that states, "Cashing this check constitutes payment in full and releases all claims you may have related to this account." If you cash that check, it will fully satisfy my obligation to you.

Sincerely,

Jason Butler

Jason Butler

33 Shady Lane

Anytown, CA

123-456-7891

Sample Letter: Cashing Check Constitutes Payment in Full on Disputed Amount—Second Letter (California)

[Send this letter to the person, office, or place designated by the creditor for communications regarding disputed debts—or to the proper collection agent if you are no longer dealing with the creditor company itself. Wait a reasonable time before sending this letter, and indicate that amount of time. Two weeks is probably reasonable, but more or less time may be reasonable in your particular situation. Don't forget to write the statement in quotations at the end of this letter conspicuously on the check.]

January 25, 20xx

Herman's Rentals
345 Main Street
Anytown, CA

Attn: Customer Service

Name on account: Jason Butler

Invoice number: 456A

To Whom It May Concern:

Two weeks have passed since I sent you a letter dated January 5, 20xx, stating my intention to send you a check with a restrictive endorsement.

Enclosed is a check for \$200 to cover the balance of my account. This check is tendered in accordance with my earlier letter. If you cash this check, you agree that my debt is satisfied in full and you release all claims you may have related to this account.

Sincerely,

Jason Butler

Jason Butler
33 Shady Lane
Anytown, CA
123-456-7891

Enclosed: Check stating on front: "This check is tendered in accordance with my letter of January 25, 20xx. Cashing this check releases all claims you may have related to Invoice number 456A, Jason Butler, and constitutes payment in full."

payment in full, but you haven't reached an agreement with the creditor for this arrangement, you can send a letter like the sample below, with a check for the lesser amount.

If the creditor cashes a check you send as payment in full, which you've sent along with a letter like that shown below, by law you won't owe the creditor any more money. Nonetheless, the creditor might insist that you still owe money anyway. You may still get collection calls, and your credit report won't reflect that you've paid the debt. In this situation, even if you're in the right, you may have to get an attorney to enforce the law. For this reason, it's wise to try to write to the creditor asking for an agreement before you send any payment, as shown in the Sample Letter to Creditors, at the start of this chapter.

Don't Write Postdated Checks

Many aggressive bill collectors will try to pressure you into sending them a postdated check: a check that bears a future date. Sending a postdated check is always a bad idea. When you write a postdated check, you are committing yourself to having the money in your checking account when the date on the check arrives. If you are already having debt problems, this is a commitment you might not be able to keep.

Although it's usually legal for creditors to accept postdated checks, they don't always wait to deposit them until the date on the check. Instead of writing a postdated check, you might tell the creditor that you will personally deliver the check on the day you write it (assuming the creditor is local).

Sample Letter: Cashing Check Constitutes a Release of All Claims When You Send Check for Less Than Full Amount Owed

[Send this letter to the person, office, or place designated by the creditor for communications regarding disputed debts, or to the proper collection agent if you are no longer dealing with the creditor company itself. Don't forget to write the statement in quotations at the end of this letter conspicuously on the check you enclose.]

June 1, 20xx

Attn: Customer Service

Name on account: Caroline Jones

Account number: 789B

To Whom It May Concern:

You have billed me a total of \$400 on this account. I can pay only a total of \$250 to satisfy this account in full. Enclosed is a check for \$250 for the balance of my account. If you cash this check, you agree that my debt is satisfied in full and you release all claims you may have related to this account.

Sincerely,

Caroline Jones

Caroline Jones

890 First Street

Central City, MO

123-456-7890

Enclosed: Check stating on front:

"Cashing this check releases all claims that may be related to Account number 789B (Caroline Jones) and constitutes payment in full."

Bad Checks

People who are broke and desperate are often tempted to write bad checks—faced with the prospect of no food or the electricity being cut off, it might seem like a reasonable solution. But of course, it isn't. Writing a bad check when you know you don't have the money to cover it is a crime. Someone who does it can face criminal prosecution, hefty bad-check processing fees (from the bank), and a lawsuit from the creditor to whom the check was written.

Some counties give people charged with writing bad checks the option of going into a diversion program—classes for bad-check writers. If you choose to go, you must pay the tuition, which usually ranges from \$60 to \$165. In addition, you must make good on the bad checks you wrote and pay an administrative fee that can be as much as \$50.

Some check diversion programs are able to use collection tactics that other debt collectors can't use. For example, you might receive letters from the diversion program on the district attorney's letterhead. (But be aware that some lawsuits say that the private company used by many district attorneys' offices to carry out their diversion programs is violating consumer protection laws. Some cases have settled with the company agreeing to pay money back to consumers.)

If you escape criminal prosecution, you'll still be charged a bad-check processing fee by your bank. Many banks charge more than \$30 per overdraft, so, if you have only \$25 in your

account and write three checks for \$10, \$25, and \$30, for example, the bank may try to cash the largest one first and you could owe fees totaling \$90 or more, plus the amount you owe for the three checks. The Federal Deposit Insurance Corporation points out that if you overdraw your account by \$30, are charged a \$27 overdraft fee, and repay the account in a few weeks, it would be the equivalent of a \$20 loan for which you were charged an astronomical annual percentage rate of 3,520%.

In addition, the person to whom you write a bad check—or one where a stop payment was later ordered—can sue for damages unless you stopped payment because of a good-faith dispute. If the payee makes a written demand that you make good on the bad check, and you don't pay by the deadline (usually 30 days), the payee can sue you.

If you lose the lawsuit, you are likely to be ordered to pay:

- the face value of check
- collection and mailing costs
- interest from the date of the check, and
- court and attorney fees.

In most states additional damages can be awarded against you for writing a bad check. In many states, you must pay three times the amount of the check, with a cap of \$500 or \$1,000. In a few states, the additional damages are limited to a small amount (\$50 or \$100). If you plead financial hardship, the court may reduce the additional damages.

Stale Checks: How Long Will a Check Be Honored?

If you wrote a payee a check several months ago, but the payee has not yet cashed it, can you add the balance back into your checkbook?

Perhaps, but not necessarily. A bank, savings and loan, or credit union is not required to honor a check presented for cashing more than six months after the check was written. Most banks do, however, unless the check has an express notation on it “not valid after six months” (called a “restrictive legend”). However, even with a restrictive legend on the check, your check still might get cashed. With electronic processing, banks normally cash checks without human review. Most bank account agreements say the bank does not have to honor a restrictive legend on a check.

What does this mean for you? If you wrote a check more than six months ago and the payee still hasn’t cashed it, you can call your bank and put a stop payment on it. The debt, however, does not go away. Be prepared for the payee to try to collect, arguing that your stop payment was not in good faith. You should respond that you waited six months, and if a bank isn’t obligated to honor a check that old, you shouldn’t be, either.

A federal law called “Check 21” may make stale checks a thing of the past. This law allows banks to process electronic images of checks instead of the paper originals. One result is that checks can be processed much faster than before.

By contrast, it is illegal for professional debt collectors to accept a check postdated by more than five days, unless they notify you between three and ten days in advance of when they will deposit it. It’s also illegal for debt collectors to deposit the check before the date stated on the check or to solicit a postdated check for the purpose of threatening or instituting criminal prosecution. (15 U.S.C. § 1692f.)

Beware of the IRS If You Settle a Debt

If you settle a debt with a creditor, or the creditor writes off a debt you owe, you could wind up owing income tax on that money. Here’s how: Creditors often write off debts after a set period of time—such as one, two, or three years after default. That means they cease collection efforts, declare the debt uncollectible, and report it to the IRS as lost income, so they can reduce their taxes. The same is true for negotiated reduction of a debt. The flip side of that is that the IRS thinks that you’ve gained income, because you don’t have to pay the debt anymore. Debts subject to this law include money owed after a house foreclosure, after a property repossession, or on a credit card bill you don’t pay.

Any bank, credit union, savings and loan, finance company, financial institution, credit card company, or federal government agency that forgives or writes off \$600 or more of the principal amount of a debt (the amount not attributable to interest or fees) must send you and the IRS a Form 1099-C at the end

of the tax year. You must report the amount on this form as income when you file your tax return for the tax year in which your debt was settled or written off unless an exception applies.

Even if you don't get a Form 1099-C from a creditor, the creditor may very well have submitted one to the IRS. If you don't list the income on your tax return and the IRS has the information, it will send you a tax bill (or worse, an audit notice), which could end up costing you more in IRS interest and penalties in the long run.

There are important exceptions to this rule. Even if you and the IRS got a Form 1099-C, you do not have to report the amount as income on your tax return if any of the following is true:

- A mortgage (with a balance of less than \$2 million, \$1 million for a married person filing individually) to buy, build, or substantially improve your principal home, or the part of a refinancing that refinanced the amount still owed for that debt, was partly or wholly forgiven between 2007 and 2012 through restructuring or foreclosure. (See IRS instructions for Form 982 at www.irs.gov.)
- A student loan was canceled because you worked in a profession and for an employer as promised when you took out the loan (see IRS Publication 525, *Taxable and Nontaxable Income*, for details).
- The canceled debt would have been deductible if you had paid it.
- You discharged the debt in a Chapter 11 bankruptcy (financial reorganization of an individual or business).

- The cancellation or write-off of the debt is intended as a gift (but this would be unusual).
- You were insolvent before the creditor agreed to settle or wrote off the debt.

Insolvency means that your debts exceed the value of your assets. Therefore, to figure out whether or not you are insolvent, you will have to total up your assets and your debts, including the debt that was settled or written off.

EXAMPLE 1: Your assets are worth \$35,000, and your debts total \$45,000. That means you are insolvent to the tune of \$10,000. You settle a debt with a creditor who agrees to forgive \$8,500. You do not have to report any of that money as income on your tax return, but you do have to file Form 982.

EXAMPLE 2: Your assets are worth \$35,000 and your debts total \$45,000, but the creditor writes off a \$14,000 debt. You don't have to report \$10,000 of the income, but you will have to report \$4,000 on your tax return but you do not have to file Form 982.

If you calculate that your debts exceed the value of your assets (that is, you're insolvent), or if your debt was discharged in bankruptcy, you'll have to fill out and include IRS Form 982 with your tax return, which can be quite complicated. You can download the form from the IRS website at www.irs.gov, but you may need an accountant to complete it correctly.

Finding Money to Pay Your Debts

Increase Your Income	82
Get Some of Your Tax Refund Early	82
Sell a Major Asset	83
Sell Smaller Items	84
Cut Your Expenses	86
Withdraw Money From a Tax-Deferred Account.....	89
Apply for Government and Agency Help	90
Unemployment Insurance Benefits	90
Human Service Agencies.....	91
Free or Subsidized Government Services.....	92
Private Agencies.....	93
Consider a Home Equity Loan.....	93
Use the Equity in Your Home If You Are 62 or Older	95
Reverse Mortgages	95
Deferral Payment Loans	98
Borrow the Money.....	99
Get Your Tax Refund Fast.....	100
What to Avoid When You Need Money	100
Avoid Consolidation Loans.....	100
Avoid Tax Refund Anticipation Loans	101
Avoid Pawnshops.....	102
Avoid Car Title Loans.....	102
Avoid Payday Loans	103
Avoid Bank and Credit Union Prepaid Cards With Advances.....	104
Avoid “Easy Solutions” to Debt Problems	104

“How pleasant it is to have money.”

—Arthur Hugh Clough,
English poet, 1819–1861

You may be considering several methods of raising cash to pay your debts. Before doing so, ask yourself if bankruptcy is a realistic option for you. (Chapter 15 can help you make this decision.) If it is, raising cash to pay debts you will ultimately erase in bankruptcy is a waste of your time and already-stretched resources. On the other hand, if you can raise the cash to pay off your debts with a reasonable amount of effort, avoiding bankruptcy is preferable. Whatever you do, finding ways to cut your expenses or get benefits for which you are eligible does make sense.

Below are several different methods of raising cash. Some have costs associated with them—such as penalties, interest, and fees. A few may cost you more money than the cash raised is worth. So read on and choose carefully to make sure you'll get some real benefit before you decide on any action.

Increase Your Income

The first and most obvious way to raise more money is to earn money. We're willing to bet that this has already occurred to you, if you're working now. There are a number of ways to earn more money:

- Increase the hours you work (for many people this means getting a second job or starting a business on the side).

- Increase the amount you earn in the time you work (this may mean switching jobs).
- Have every person in your family work who is capable of working, even students.
- Make sure your investments are giving you the best possible return.

Consider these options, but be sensible.

Any of these strategies could backfire. Taking a second job or having your spouse go back to work could mean you're suddenly paying a lot for babysitters, fast food, transportation, dry cleaning, and additional income taxes, with precious little net benefit to your overall situation. Most new businesses fail and many require additional debt to get off the ground. Nor will it help to work yourself into a nervous breakdown or invest in speculative schemes.

Keep in mind that you need cash on hand to pay your living expenses and essential debts (such as housing and transportation). Prioritizing your needs, becoming more conservative about expenses, and searching for any benefits you may qualify for may show faster results that will get you through the rough times and set you on a good course for the future.

Get Some of Your Tax Refund Early

Many people have much more money withheld from their paychecks than they will need to pay their income tax for the year. By adjusting the withholding to better match your income, you can get more money in each paycheck to help you keep current

or catch up on bills each month, instead of having to wait until the end of the year to get a refund. Ask your employer for a new IRS W-4 form or get the form from the IRS website at www.irs.gov. Complete it by following the instructions or by getting help from a tax advisor.

The goal is to adjust your withholding so you can keep more of your income but still not owe any taxes at the end of the year. If you are afraid of withholding too much and then owing a large tax payment or penalty in April, use the IRS's withholding calculator to assist you in determining the correct withholding amount. Go to the IRS's website at www.irs.gov and search for "withholding calculator." If your income is regular, the IRS form should do a good job of estimating the correct withholding amount. Even if you do owe more taxes at the end of the year, you can usually pay this amount over time. (See Chapter 5 for more information on this.) You most likely won't have to pay a penalty, unless your underpayment is way out of line. If you have any doubts, get help from a tax advisor.

Once you return the form to your employer, you should start seeing more money with your next paycheck. (If your income increases, don't forget to readjust your W-4 withholding to match.)

If you qualify for an Earned Income Tax Credit (EITC), you can get a lump sum of cash from the federal government when you file an income tax return. The credit is given to low and moderate income working families. For the 2010 tax year, a family with three children earning up to \$48,352 can qualify for an EITC. The tax credit (the

equivalent of cash back to you) may be as much as \$5,666, depending on your income and family size. To see if you qualify, go to the IRS website (at www.irs.gov) and search for "EITC home page." The only way to get the credit is to file a tax return, and claim the credit on the return. So, even if you aren't required to file a return because your income is too low, file one anyway.



TIP

Servicemembers can cut expenses and more. Servicemembers, reservists, and their dependents can use the Servicemembers Civil Relief Act to reduce payments on credit obtained before entering active duty and stop collection efforts while they are on active duty. (See Chapter 5 for details.)

Sell a Major Asset

You can raise cash and keep associated costs to a minimum by selling a major asset, such as a car or, as a last resort, your house. This may be a good idea if you can no longer afford your house or car payments—or if you happen to have a second house or car you can do without.

Don't automatically decide to sell property. Try to be realistic about how much you can get for it and whether it's worthwhile to sell. For example, you may be better off keeping a useful car that's now worth less than its remaining loan balance. And remember, if you lease your car, you must return it to the lessor; you can't just sell it. If you decide to

sell, you will net the most money if you own the property free and clear, although you should plan to pay income or capital gains taxes that may be due on the sale, and other expenses from the proceeds of the sale.

It is almost always possible to sell property that you haven't finished paying off. You will almost always do better selling the property yourself rather than waiting to get cash back from a foreclosure or repossession sale. Those sales are not usually carried out in a way to get the best prices; they usually do not result in much, if any, money being left for you. (You may also get a better price if you don't have to sell in a hurry.) With the proceeds of the sale, you'll have to pay off the lender(s) and any secured creditors to whom you pledged the asset as collateral. Then you'll have to pay off any liens placed on the property by your creditors. You can use what's left to help pay your other debts. Even if nothing is left, getting rid of large monthly payments may help you afford your other bills. (See Chapter 8 for information on selling your home if you owe more than it's worth.)



TIP

Help selling your car. For tips on selling your car yourself, check out Car Talk's website at www.cartalk.com.



CAUTION

Don't forget possible tax consequences. If you are selling stocks, real estate, or anything else that is valuable that has increased (or decreased) in value, or on which you might owe

capital gains or some other transaction tax, consult a tax professional *before* the sale. Sometimes a sale can be legally structured to obtain a favorable tax result. Other times, you may find out that the tax consequences of selling are so unpleasant that you would be better off doing something different, such as using the asset as collateral for a loan or choosing another asset to sell.

Sell Smaller Items

Even if you're not a packrat, you probably own things you never use or don't need any more. Thanks to the Internet, it has never been easier to get rid of property you have no use for. All kinds of property can be sold on eBay (www.ebay.com) and similar auction websites. These sites are proof of the old maxim, "One man's trash is another man's treasure." They provide an instant audience of millions of potential buyers of practically anything.

With any luck, you'll connect with a collector of obscure items in your clutter. Baseball cards and comic books have been collected for years, but there are also collectors of dolls, ashtrays, electronic equipment, musical instruments, "retro" furniture, old dishes, china, and antiques of any kind. A good way to figure out what an item is worth is to search eBay for similar items and see what buyers are bidding for them.

In addition to auction sites, some retailers (including Amazon.com) let you sell used books and CDs to other customers. You may not get much money for each individual book or CD, but if you have several dozen or

some hundreds to sell, it can provide some badly needed cash.



CAUTION

It can cost money to sell things.

When you sell online, it's up to you to pack up the sold item and pay for shipping. Make sure you're getting enough for the item to make a profit after the costs of shipping. Also, *beware of scams*. Complaints about Internet shopping ranked number five in the Better Business Bureau's list of top ten consumer complaints for 2009. Reputable websites like Amazon and eBay are careful to collect the money from the buyer, but if you sell directly to an online buyer, you could ship your stuff and never get any money back.

Check out the FTC's tips for Internet auctions or its free online guide, "Internet Auctions: A Guide for Buyers and Sellers." You can find both on the FTC's website at www.ftc.gov/bcp (search for "internet auction tips" or type in the guide's title). Pay close attention to the sections on arranging for payment, fake checks, and money orders.

You don't have to know how to use a computer to get rid of your belongings. There are always the traditional low-tech ways to sell:

- Advertise in the newspaper.
- Have a yard sale (be sure to ask about a local permit).
- Take a load to the flea market.
- Take vintage or expensive clothing to a resale shop.
- Take books (and perhaps musical recordings, depending on the reseller) to a used book store.

- Take good jewelry to a jeweler who sells "estate jewelry."

Before you go to a reseller, have a ballpark idea of what your things are worth and a realistic idea of what condition they're in. That way, you'll be a better negotiator, you won't get cheated, and you won't insist on an unrealistically high price that results in no sale.

A consignment shop is another option, but make sure that it's reputable and well established in your community. Consignment shops usually keep 35% to 50% of what they can sell an item for and give you the rest. Before doing business with a shop, check with your local Better Business Bureau to see if complaints have been lodged against it (or go to www.bbb.org, fill in the zip code for the store location, then click "For Consumers"). If there are complaints, that's a warning. Unfortunately, the absence of complaints doesn't necessarily mean you can trust that shop. A business can change names or defraud a lot of people before complaints catch up to it.

If you decide to use a particular shop, ask how they insure items in their store in case of fire, theft, or other loss. If the store assures you the items are insured, ask for a copy of the insurance policy. If the store won't provide that, get a receipt for the item you leave and have them write on it that the item is insured in full.



TIP

You may collect more money if you sell it yourself. Why? At a shop, resale items in good condition are often priced at about 70% of

what they would bring if they were new. (We're not talking about collectors' items here.) A shop has overhead, and it needs to make a profit—typically, by charging almost double what it pays for an item. At most, the shop will offer you about a third of what the item would sell for, new. If you invest some time in a yard sale or flea market, you could likely sell it for more.

Cut Your Expenses

Another excellent way to raise cash is to cut your expenses. It will also help you negotiate with your creditors, who will want to know what efforts you've taken to live more frugally.

Cutting expenses is not a popular subject, especially for people facing money troubles. Some folks feel like they've already cut everything possible. Some feel that cutting a little bit here or there won't make a dent in their money problem, so don't see the point. Others feel that cutting out pleasures will make life so miserable that it's not a realistic solution. If any of these describe how you feel, before you skip this section, consider this:

- Some of the suggestions in this section may surprise you.
- When thinking about whether a little savings here or there would help, consider how much difference the change would make over a year, not just over a week or a month. Just like weight loss, a slight change each month amounts to a big change by the end of the year.
- Most important, consider what you need to make you happy. Research shows

that when you get beyond basic needs, experiences make most people happier than do purchases. So, watching movies or playing games with the family at home is not only cheap, but likely to make you happy. Studies also show that a big part of what makes us happy is the anticipation of a purchase, not the actual purchase itself. This means that planning and saving for a purchase over time will likely make you happier than just buying the item on credit.

Where and how you cut expenses will depend on your income, your debt level, and your living standard. If you have a large income but also high expenses and enormous debt, you need to review your priorities. It's up to you to decide what is necessity and what is a luxury. You may be able to cut expenses significantly if you:

- Take the children out of private schools.
- Move to a smaller house.
- Reduce the number of vehicles you own.
- Switch to less costly cars.
- Put off expensive vacations.
- Stop buying clothes or lavish gifts.
- Eat at home instead of going out.

If your savings from the steps above are not enough to deal with your debt, or you never spent money on private schools and fancy cars to begin with, here are some more modest suggestions for cutting expenses and making your income go further:

- Try bargaining. According to *Consumer Reports* magazine, only about a quarter of people surveyed had tried bargaining when making purchases. Those who did haggle on such things as clothing,

credit card fees, cell phone bills, or electronics were successful. A great place to practice haggling is at a local farmers' market, especially toward the end of the day.

- Shrink food costs by clipping coupons, buying sale items, buying in bulk, and shopping at discount outlets.
- Improve your gas mileage by tuning up your car, checking the air in the tires, and driving less. Try to carpool, work at home (telecommute), ride your bicycle, take the bus or train, and combine trips.
- Conserve gas, water, and electricity, turn off lights, televisions, and stereos when they are not in use. Run the dishwasher and washing machine with full loads and less frequently. Get a free energy audit from your local utility company.
- Have your home reassessed to lower your property taxes. Your property taxes are based in part on the value of your property, which is often calculated using the purchase price of your home or the change in value since you bought your home. Sometimes, local governments do not reassess home values to match falling housing prices. Getting your property taxes reduced to reflect the actual value of your home could save you hundreds of dollars or more per year. Check with your local assessor's or similar office to learn how to get your property reassessed.
- Discontinue cable, or at least the premium channels. Most cable companies offer a lower rate for basic service that they don't advertise. Ask about rates for basic service, and also whether you'll be charged a penalty if you switch plans.
- Instead of buying books and CDs or renting DVDs or videos, borrow them from the public library. Read magazines and newspapers there, too, instead of subscribing to them.
- Look for new ways to spend time socializing. Take walks with friends instead of meeting for lunch. Get together to devote time to charity work—cleaning up a park or delivering meals to the elderly.
- Buy store brands. According to *Consumer Reports* magazine, store brands can save you, on average, 30%. In taste tests, some store brands ranked better than name brands, and most ranked as good as name brands.
- Cancel voice mail, call forwarding, or call waiting. Make long distance calls only when necessary and at off-peak hours. Also, compare programs offered by the various long distance carriers to make sure you are getting the best deal. Because most don't disclose all the extra fees they add on to the basic fee, call and ask for all charges, including any fees or taxes. If you're considering switching plans or carriers, call your current carrier to find out if you'll have to pay a fee. If you rarely make long-distance calls, it might be cost-effective to cancel your long-distance plan and make your rare long-distance calls using a prepaid dial-around service. Avoid most prepaid calling cards and check carefully all the costs of a dial-around service. If you do purchase one of these

services, keep track of how much time you use and how much it really costs. Many of these services are notorious for having hidden fees and making claims of how much time you will get that are inflated by 25% to 50% or more.

- Cancel your cell phone. Contact your carrier and find out whether you'll have to pay a penalty to cancel your contract. If not, go ahead and cancel it. Get a better cell phone deal. Many people pay high monthly fees and wind up with thousands of minutes rolled over that they will never use. If you need a cell phone, check into prepaid phone service deals. Monthly plans for 100 rollover minutes, with no roaming or long distance charges, start as low as \$10 a month. Phones (which include many features including camera and an Internet connection), cost as little as \$30. With a family plan, you can often add phones for as little as \$5 per month. Even if you don't want to go with a prepaid phone, most people can save a lot by switching plans or to a different cell phone company. But, make sure that changing the plan won't require you to buy a new phone or bind you to a new one- or two-year contract with a large early termination penalty.
- Carry your lunch to work; eat breakfast and dinner at home, not at restaurants.
- Put off major purchases unless they're absolutely necessary. If you must buy a vehicle, an appliance, or furniture, try to get it secondhand.
- Carefully review your regular monthly bills for any charges you don't

recognize. Your telephone or cell phone service, cable, or credit card accounts may impose fees for services you don't need, such as voice mail or call waiting, credit card protection plans, or a variety of so-called membership services. Call and find out what the services are and cancel any you don't need; confirm the cancellation in writing.

- Use parks. Learn about recreation programs offered by local parks. Instead of vacations, take day trips to nearby state or national parks. Most are either free or charge one low fee per automobile and offer a variety of recreational activities and interpretive programs for children and the whole family. Prepare a picnic lunch to take with you on day trips to keep the cost down and add to the experience.
- Stop spending on gifts and give experience gifts instead. Give "Get Out of Dishwashing Free" or similar cards, allowing the recipient to use the card when they want to avoid a regular chore. Think of other experience or service gifts that give of yourself, rather than a store purchase.
- Cancel your private mortgage insurance (PMI), if you're eligible to do so. PMI protects the lender, not you. If you can cancel PMI, you could save hundreds to thousands of dollars per year. Lenders typically require home buyers who put less than 20% down to pay for insurance to protect the lenders in case the buyer defaults before building up equity. A lender rarely offers to cancel the policy after the buyer reaches 20%

equity, however, and buyers often unnecessarily pay for PMI for years. A federal law applying to most mortgages obtained after July 29, 1999 requires lenders to automatically cancel PMI on the date the borrower's equity is expected to reach 22%, based on the original value of the property and the original schedule of payments, if payments are current at that time, or as soon as payments are brought current after that (so it does not matter if the value of the property dropped). It also allows buyers with good payment histories whose payments are current to request cancellation of the PMI based on the original value, when either the original schedule of payments or actual payments, at the borrower's option, reaches 20%. For this early cancellation of the insurance, the lender may also require the borrower to show the value of the property is not less than the original value and certify there are no second mortgages on the property. (12 U.S.C. §§ 4901 and following.)

Loans designated as "high risk" when made are not eligible for termination until the percentage reaches 23%. If the law doesn't apply to you, you can still contact your lender and request cancellation. Most will do so once the equity reaches 20%. Some states also have laws regulating PMI.

- Stop charging small purchases. People today charge everything on their credit cards—dry cleaning, sandwiches, frappuccinos, groceries, movies, cocktails, postage, gum, and so on—

and feel that their finances are under control because they have cash in their wallets or purses. These little expenses are hard to keep track of and add up quickly by the end of the month, often becoming budget busters. Try leaving the credit cards at home and paying cash for these things or forgoing them. If you really don't want to go without a \$5 coffee drink, pay cash for it (so that you'll appreciate how much it costs); better yet, enjoy it as a reward when your finances are back on track.

These are just a few of many ideas for cutting expenses. You can review old *Consumer Reports* magazines for more suggestions (find them at the library) or check out the suggestions at www.bankrate.com or other websites. Keep a list of the ways you cut expenses. Mentioning your efforts to creditors may be useful in your negotiations because they demonstrate how serious you are about getting your debts under control.

Withdraw Money From a Tax-Deferred Account

If you have an IRA, 401(k), or other tax-deferred retirement account, you can get cash to pay off debts by withdrawing money before retirement. But if you do so, you'll probably have to pay a penalty and taxes. Or, with a 403(b), 457, or 401(k) plan, you may be able to borrow money from it (instead of withdrawing it).

Different plans have different requirements for borrowing and withdrawing money.

Withdrawing money early from a tax-deferred account is expensive. Generally, any money that you take out of your 403(b), 457, or 401(k) plan before you reach age 59½ is treated as an early distribution on which you'll owe penalties and income taxes.

Instead of withdrawing money, you can usually borrow up to half of your vested account balance, but not more than \$50,000. Then you pay the money back, with interest, over five years. If you can't pay the money back within five years (or immediately, if you leave your job), your "loan" will be treated like an early withdrawal and you'll pay both an early distribution tax and income tax.

There are serious disadvantages to both options. You should only consider these if you have other substantial retirement funds or you are truly desperate. Also, consult your tax adviser before you do anything. Always look to raise money from nonretirement resources first.



RESOURCE

Need more information on retirement accounts? If you are considering withdrawing or borrowing money from your retirement account to pay off debts, get a copy of *IRAs, 401(k)s & Other Retirement Plans: Taking Your Money Out*, by Twila Slesnick and John C. Suttle (Nolo).

Apply for Government and Agency Help

When you find yourself having money troubles, don't overlook official help. Despite a steady contraction in social services in

recent years, the government still provides something of a "social safety net" to help people with temporary money problems.

Unemployment Insurance Benefits

You may be eligible to apply for unemployment benefits if any of the following occurs:

- You are fired for any reason, other than for gross misconduct.
- You quit your job for an extremely good job-related reason.
- You are laid off.

Your telephone book should have the phone number for the closest unemployment office, so check the state government listing sections. For a link to the unemployment insurance website in your state, see the Department of Labor's employment and training information website at www.dol.gov/unemploy. For an online calculator, try your state's website or its employment department. Be sure to ask your state agency these questions:

- How much is my benefit amount? (It will depend on how much you earned at work.)
- How long can I collect benefits? (This has usually been 26 weeks, but Congress and the president have increased this limit several times during the recession. In some states, up to 99 weeks of unemployment benefits are available for those who applied by November 30, 2010. Whether extended benefits will be available to those who apply after that date will depend on further action by Congress and the

president. To see how many weeks of unemployment are available in your state, go to The Center on Budget and Policy Priorities website at www.cbpp.org and search for “How Many Weeks of Unemployment Compensation are Available?”

- If I start working again before then, will my benefits be reduced? (You may be able to increase your income, up to a point, without losing all of your benefits.)

Unemployment programs typically require a fair amount of paperwork. You are expected to look for work while you are collecting benefits, and you may have to report in writing on your search.

Human Service Agencies

Contact other agencies to find out if you qualify for food stamps, Medicaid, general assistance, veterans' benefits, workers' compensation, Social Security, or disability benefits.

- Supplemental Security Income (SSI) provides cash assistance to persons who are at least 65 years old, or people of any age who are blind or disabled, who have limited incomes and few resources. In most states, people eligible for SSI are automatically enrolled in Medicaid.
- Medicaid is a government program that provides health and medical coverage to low-income people. Benefits may vary from state to state. Medicaid may cover

things that Medicare generally does not, such as long-term care.

- The Medicare Savings Programs provide financial help with Medicare expenses for senior citizens with limited incomes and resources.
- The Food Stamp Program (now renamed the Supplemental Nutrition Assistance Program (SNAP)) provides monthly assistance to low-income persons to purchase food at grocery stores.

Human service agencies in each state administer several federal benefit programs for persons with low incomes, including Medicaid, Medicare Savings Programs, and food stamps. These agencies go by various names depending on the state, such as Department of Social Services, Human Services, or Public Aid. You can get an application for food stamps at the local Social Security Administration (SSA) office; this office can also help families applying for SSI to fill out the application. You can find the nearest Social Security office by using the SSA's Social Security Office Locator under “Contact Us” at www.ssa.gov or by calling 800-772-1213 or TTY at 800-325-0778.

For more information on Medicaid and Medicare, and for state contact information for Medicaid, go to the federal government's Health & Human Services Medicare/Medicaid website: www.cms.hhs.gov. Your state website may also provide Medicaid information online. To find the website for your state, go to www.cms.gov/MedicaidEligibility, scroll to the end and under “Downloads” click on “List of State Medicaid Program Websites.”

Free or Subsidized Government Services

Many government agencies offer free or discounted services that can save you money. Some are offered through private companies, rather than directly through the agency. It pays to check what may be available for you. For example, most utilities offer government subsidized programs to provide reduced-cost basic services for low-income people. Call your utility to see if you qualify.

About 70% of Americans qualify to have their income tax return prepared for free, but most don't take advantage of any of these three free programs.

- **Volunteer Income Tax Assistance Program (VITA).** You qualify for the VITA if your income for the year was below \$49,000 (for a 2009 tax return). VITA, which is staffed by trained and tested volunteers, offers tax preparation services at community and neighborhood centers, libraries, schools, shopping malls, military bases, and other locations across the country. Most offer free electronic filing, which means you will usually get your refund within one to two weeks. For more information go to www.irs.gov/individuals and search for "VITA." To find a VITA location near you, call 800-906-9887.
- **AARP's Tax Counseling for the Elderly (TCE).** Free income tax preparation is also available to persons 60 years of age or older under the Tax Counseling for the Elderly (TCE) program. Call the IRS at 800-906-9887 for information about a location near you. AARP operates many of the tax preparation sites for

seniors under the name Tax-Aide. It provides tax return preparation for low and moderate income seniors, including electronic filing, which means you will usually get your refund within one to two weeks. To locate a Tax-Aide office, go to www.aarp.org/money/taxaide, or call 888-227-7669.

- **Other free tax services.** Even if your adjusted gross income is as high as \$57,000 (for 2010 filing), you probably qualify for a free service to help you prepare and file your taxes online, including electronic filing, which means you will probably get your tax refund within one to two weeks. However, watch out. The free online filing is provided by private companies and they will likely try to sell you additional services. (To find out more, go to www.irs.gov and search for "Free File.")

The 2009 stimulus bill expanded weatherization programs for low and moderate income families. By taking advantage of these programs to weatherize your home, you can reduce your utility bills and possibly increase the property value of your home. To find out if you qualify and where to apply in your state, go to the U.S. Department of Energy's website at www1.eere.energy.gov. The site also has links to other programs that may help if you do not qualify for the weatherization program.



RESOURCE

More information on benefits.

BenefitsCheckup, sponsored by the National Council on Aging, is a free online service (www.benefitscheckup.com).

benefitscheckup.org). You anonymously fill out a questionnaire, and the website finds public benefits programs for which you may be eligible and tells you how to apply. These programs may pay for some of the costs of prescription drugs, health care, utilities, and other essential items or services. Nolo also publishes a variety of products that deal specifically with applying for several kinds of benefits:

- *Nolo's Guide to Social Security Disability: Getting & Keeping Your Benefits*, by David A. Morton III, MD
- *Social Security, Medicare & Government Pensions: Get the Most Out of Your Retirement & Medical Benefits*, by Joseph L. Matthews with Dorothy Matthews Berman, and
- *Long-Term Care: How to Plan & Pay For It*, by Joseph L. Matthews.

Private Agencies

There may be a host of nonprofit associations available to help you out. In some cases, it helps if you are a member of a fraternal organization or an ethnic or religious group, a native son or daughter, and so on. You can get to the right organizations by using your phone book, surfing the Internet, or calling friends, your local senior center, or local churches.

Consider a Home Equity Loan

Many banks, savings and loans, credit unions, and other lenders offer home equity loans, also called second mortgages, and home equity lines of credit also called HELOCs. Traditionally, lenders who make

home equity loans establish how much you can borrow by starting with a percentage of the market value of your house—usually between 50% and 80%—and deducting what you still owe on it. The lender will also consider your credit history, income, and other expenses in deciding whether—and how much—to lend you.

EXAMPLE: Winnie's house is worth \$200,000, and she owes \$120,000 on her first mortgage. A bank has offered her a home equity loan at 75%, that is, for \$30,000. The lender figures it like this: $75\% \times \$200,000 = \$150,000$; $\$150,000 - \$120,000 = \$30,000$.

Be careful that you don't simply max out your credit cards again after you use your home equity to pay down your debts. Many borrowers wind up deeper in debt—this time with a large equity line to repay as well.

There are two basic kinds of home equity loans:

- **closed-end loan.** You borrow a fixed amount of money and repay it in equal monthly installments for a set period (a home equity loan).
- **line of credit.** You borrow as you need the money, drawing against the amount granted when you opened the account (a home equity line of credit, also called a HELOC).

The interest you pay may be fully deductible on your income tax return.

It may sound attractive to take out a home equity loan, at a relatively low interest rate, to pay off a high-interest credit card balance. This is a bad idea. As discussed earlier, if

you don't pay back your credit card debt, you might get sued. But if you don't pay back a home equity loan, you could lose your house. So, don't use the proceeds of a home equity loan to pay off unsecured debts such as a credit card balance—doing so effectively turns unsecured debt into secured debt and puts your house at risk.

Home equity loans have other disadvantages, including:

- Some home equity loans are sold by predatory lenders at very high rates. Predatory lenders target people in financial trouble or with past credit problems. Avoid any lender who tells you to falsify information on a loan application or pressures you into applying for more money than you need or monthly payments you cannot afford. Predatory lenders may also change information on the typed version of your loan application from the information you gave to make your income look higher. Check carefully any documents, including any loan application you are asked to sign. Making your income look higher is a recipe for getting a loan you cannot afford. If you can't afford the loan, you may be setting yourself up to lose your home and destroy your credit rating.
- The same kind of predatory tactics involved in refinancing a mortgage also happen in equity loan transactions. For example, lenders may increase the interest rate or fees on the final loan documents after enticing you with what sound like very low rates. For suggestions on how to handle

these and other predatory tactics, see “Refinancing” in Chapter 8.

- Some home equity loans are “interest-only” loans; your monthly payments pay only the interest on the loan and do not reduce the principal amount that you borrowed. You could make payments for years and still owe the full amount you borrowed.
- Teaser rates might make a home equity loan look more attractive than it is. Equity loans often have a variable interest rate that rises or falls with a particular interest rate index (sometimes referred to as adjustable rate mortgages or ARMs). But often, the rate for the first six months to three years is much lower. Once the initial period ends, the rate automatically jumps up to the regular variable rate, which can make your loan payments much higher. Many people have been caught in this trap, when loans they took out in the past couple of years suddenly cost a lot more every month, and they were unable to refinance to lower their payments. If you're considering an equity loan, make sure you know the teaser rate, the regular rate, when the regular rate kicks in, and how much your payments will likely be then.
- You are obligating yourself to make another monthly or periodic payment. If you are unable to pay, you may have to sell your house or, even worse, face the possibility of the lender foreclosing. *Before you take out a home equity loan, be sure you can make the monthly*

payment, both initially and after any teaser rate resets.

- While interest may be deductible (it isn't always), it may be high. Your tax deduction doesn't save you the full amount of interest you pay; instead, it allows you to subtract that interest from your income when you calculate your income tax. So your true savings from taking an interest deduction is only a fraction of the interest you pay out in the first place. Check Bankrate.com for current rates (www.bankrate.com).
- You may have to pay an assortment of up-front fees for an appraisal, credit report, title insurance, and points. These fees can cost thousands of dollars. In addition, for giving you an equity line of credit, many lenders charge a yearly fee of \$50 to \$75 or so.
- You must pay what you still owe on the equity loan, plus what you owe on the mortgage, when you sell your house.

Canceling a Home Equity Loan

Under the federal Truth in Lending Act, you have the right to cancel a home equity loan or second mortgage until midnight of the third business day (excluding Sundays and federal holidays *but including Saturdays*) after you sign the contract or are given the loan disclosures, whichever is later. You must be given notice of your right to cancel and two copies of a cancellation form when you sign the contract. (See Chapter 3 and Chapter 8, "Refinancing," for more information.)

Use the Equity in Your Home If You Are 62 or Older

A variety of plans are designed to help older homeowners make use of the accumulated value (equity) in their homes without requiring them to move, give up title to the property, or make payments on a loan. The most common types of plans are called reverse mortgages and deferral loans for property tax and home repair.

These plans can raise a senior citizen's standard of living and help an older person maintain independence by providing cash for everyday living expenses, home maintenance, or in-home care. But they're not for everybody. Reverse mortgages can be very expensive and a real trap for seniors.

Reverse Mortgages

Reverse mortgages are loans that homeowners age 62 or older take out against the equity in their home. A reverse mortgage provides cash advances to the owner and requires no repayment until the end of the loan term or when the home is sold. The borrower can receive the cash in several ways, and usually does so in a combination of the following:

- a lump sum (often used to pay off any existing mortgages, and perhaps to take out some extra cash to pay off other bills or do home repairs)
- a line of credit or "credit line" (you use the money only if you need it, while unused funds earn interest and grow)
- regular monthly payments (because these are less flexible, they are not recommended if a line of credit will do).

Reverse Mortgage Types		
Name of Mortgage	What You Get	When It's Due
Reverse Mortgages Available in FHA's Program		
Fixed-term	If you receive monthly advances, they stop after a specified period of time.	At the end of the period
Tenure	If you receive monthly advances, they keep coming as long as you stay in your home.	Once you leave (for example, you sell your house or go into a nursing home)
Line of credit	Unscheduled payments or installments—you choose the payment due dates and amounts.	When line of credit is exhausted
Modified tenure	Combination of line of credit and scheduled monthly payments.	Once you leave your home
Modified term	Combination of line of credit and monthly payments for a fixed period of months.	At the end of the period or when credit is exhausted
Non-FHA Reverse Mortgage Types		
Portable	A lump sum advance in order to purchase an annuity that will pay you a fixed amount as long as you are alive, no matter where you live	Once you leave the house Note: This kind of mortgage is complicated. You will probably need a lawyer.
Lump sum	The entire loan amount in one lump sum	Once you leave the house

What a reverse mortgage is called will vary, as shown above, depending on how you will receive money and when you have to pay the loan back. Any of the mortgages listed below can combine one or more of the payment methods listed above.

To determine the amount it will lend to you, a reverse mortgage lender will usually look at your age, the amount of equity you have in your home, and current interest rates. All reverse mortgages cost money: closing costs (title insurance, escrow fees, and appraisal fees), loan origination fees, accrued interest, and, in most cases, an

additional charge to offset the lender's risk that you may default (not pay). Reverse mortgages through a private, for-profit company are often very expensive and come with high interest rates.

The most widely available reverse mortgages are the FHA's Home Equity Conversion Mortgage (HECM) Program. HECM includes the attractive credit line option that allows your unused balance to earn interest over time. These are federally insured loans available through private lenders. Federally insured reverse mortgages limit loan costs that lenders can charge

Disadvantages of Reverse Mortgages

- Once you borrow against your equity with a reverse mortgage, there's no turning back. This equity will not be available to you unless you pay off the loan.
- The costs of a reverse mortgage can be very high, and some mortgages have unfair terms.
- A reverse mortgage may also restrict your freedom. Often, the entire reverse mortgage comes due if you are no longer living in your home. Some lenders treat an extended stay away from your home, such as a long trip, a visit to your children, or a stay in an assisted-living facility as evidence that you are no longer living in the home or haven't properly secured it in your absence and, therefore, that your entire loan must be paid off immediately.
- Some unscrupulous lenders offer products that sound like reverse mortgages, but are really conventional loans. Others sell reverse mortgages that lend more money than you need, are very high cost, or have unfair terms. Some unscrupulous individuals offer to refer senior homeowners to lenders that provide reverse mortgages, in exchange for a percentage of the loan. Information on reverse mortgages is free from the U.S. Department of Housing and Urban Development.
- A reverse mortgage makes it difficult to leave your home to your heirs after you die, because your estate has to pay the loan back—and, usually, the house is sold to cover the debt.
- Because you don't make payments, the amount of money owed increases over the life of the loan. While you retain title to your home, you must pay the property taxes, insurance, and the costs of keeping up the property.
- A reverse mortgage (or annuity payments funded by a lump sum reverse mortgage) may affect your ability to receive need-based government benefits, such as Supplemental Security Income (SSI). Although loan advances from a reverse mortgage are not considered "income," they may increase your amount of "liquid assets" above limits set by government benefit programs.

and guarantee that lenders will meet their obligations. Even so, reverse mortgages are not inexpensive.

Some states also offer very-low-cost government-sponsored reverse mortgages that are available only for specific purposes. (See “Deferral Payment Loans,” below.)

There are pros and cons to reverse mortgages. In general, a reverse mortgage works best for older people with a lot of equity in their homes.

The lender or a third party may suggest that you purchase an annuity in conjunction with a reverse mortgage. An annuity is an insurance product financed out of the home’s equity, which provides monthly payments to the borrower beginning immediately or some years later.

Do not buy an annuity. It ties up the money from the reverse mortgage for an extended period, imposes additional transaction costs, imposes substantial penalties for early withdrawal, and may not benefit elderly homeowners (who may not live to see their first annuity payment, if there is a delay of several years). Indeed, the federal government and California prohibit lenders from requiring homeowners to purchase an annuity as a condition of obtaining a reverse mortgage.

You can get free information on reverse mortgages from the following organizations:

- The federal Department of Housing and Urban Development (HUD). Call them at 800-225-5342, TTY at 877-833-2483, or visit their website, www.hud.gov, and select “Learn about reverse mortgages,” for facts about reverse mortgages,

referrals to lenders, a link to AARP reverse mortgages, calculators, and lists of HUD-approved housing counselors.

- AARP (formerly the American Association of Retired Persons). Call them at 800-209-8085 or visit their website, www.aarp.org/money/revmort, for tips on evaluating reverse mortgages, eligibility and repayment requirements for federally insured reverse mortgages, and a reverse mortgage calculator.
- The National Center for Home Equity Conversion. Visit their website, www.reverse.org, for answers to frequently asked questions about reverse mortgages.

Be careful of people who come to speak at senior centers about reverse mortgages unless they come from a government agency. Often insurance agents or loan brokers offering predatory-type loans use “free” talks at senior centers to drum up business.

Deferral Payment Loans

Deferral payment loans are need-based loans used for a special purpose: to make property tax payments or to pay for home repairs. The cost of these loans is very low, and repayment is deferred as long as you live in your home. Deferral payment loans are generally available through state or local government agencies.

There are two types of deferral payment loans:

- **Property tax deferral loans.** Many states provide vouchers to approved applicants to pay their property taxes.

Contact your tax assessor to see if such a program is available in your county.

- **Home repair deferral loans.** These are loans for home repairs at no or very low interest.

Borrow the Money

If you have good credit and have hit a temporary rough patch, you might be able to get an unsecured personal loan from a bank or credit union. (This means that you sign loan papers and make regular payments but give them no collateral.) Another potential source for a loan is a community development bank or loan fund that makes loans to businesses and in distressed communities not served by other lenders. (Your local bank may have a program like this or know who offers them locally.) But before you borrow money from an institution, ask yourself:

- Can you pay back the money?
- Can you find a loan on better terms?

Some people are lucky enough to have friends or relatives who can and will help out. Before asking your college roommate, Uncle Paul, or someone similar for help, consider the following:

- Can the lender really afford to help you?
- Do you want to owe this person money? If the loan comes with emotional strings attached, be sure you can handle the situation before taking the money.
- Will the loan help you out, or will it just delay the inevitable (most likely, filing for bankruptcy)? Don't borrow money

to make payments on debts you will eventually discharge in bankruptcy.

- Will you have to repay the loan now, or will the lender let you wait until you're back on your feet? If you have to make payments now, you're just adding another monthly payment to your already unmanageable pile of debts.
- If the loan is from your parents, can you treat it as part of your eventual inheritance? If so, you won't ever have to repay it. If your siblings get angry that you are getting some of your parents' money, be sure they understand that your inheritance will be reduced accordingly.



RESOURCE

Resources for personal loans. 101

Law Forms for Personal Use, by Robin Leonard and Ralph Warner (Nolo), includes customizable promissory notes for lending money between family members. Nolo's website at www.nolo.com also sells [forms online](#) that you can use to create and print your own promissory note.



CAUTION

One word of warning: If a friend or relative lends you money at a below-market interest rate or gives you cash as a gift, that person may have to pay gift taxes. For 2010 and 2011, gifts of more than \$13,000 per person per year are subject to gift taxes. And the definition of "gift" includes a break on interest (although because the amount of the "gift" is the break on interest per year, not the amount loaned, most loans won't incur gift taxes on the principal amount borrowed).

Get Your Tax Refund Fast

Sometimes, getting a tax refund quickly will help you through a crisis, especially if the IRS owes you a lot.

If you're getting a refund, file your tax return early. You can file your return electronically and have your refund deposited directly into your account. But it's a bad idea to get a tax refund anticipation loan in the meantime; see "Avoid Tax Refund Anticipation Loans," below. See above under "Free or Subsidized Government Services" for free tax preparation services available.



CAUTION

Student loan debtors: Don't count your dollars before they're hatched. If you are expecting a large tax refund—and you've defaulted on a student loan—don't count on seeing the money. Intercepting tax refunds is the method most frequently used by the government to collect outstanding student loan dollars. Yearly, the federal government pockets more than \$800 million by grabbing tax refunds and wages (without having to get a judgment first) from defaulted student loan borrowers. And if you legitimately owe the money, stopping a tax refund intercept is very difficult. For more information on student loan collections, see Chapter 11.

What to Avoid When You Need Money

Making wise financial decisions when the bills are piling up is not easy. But, even if you feel desperate, don't jump at every

opportunity to get cash fast. If you make a bad choice, you'll just get yourself deeper into debt. Here are some of the options that you should avoid.

Avoid Consolidation Loans

Some bank subsidiaries and consumer finance companies lend money in the form of consolidation loans. Finance companies make secured consolidation loans, usually requiring that you pledge your house or car as collateral. These loans are just like second mortgages or secured vehicle loans.

The amount of interest you may be charged on a secured consolidation loan can vary greatly, from about 10% to more than 36%, depending on your credit rating and the security. Those offering consolidation loans are often unwilling to provide you with interest rate information until you fill out an application, making it difficult to comparison shop. If you are considering a consolidation loan, tell the lender that even if you provide answers to their questions, you do not want to have an application submitted until you get information about the interest rate.

If you default on the loan, the finance company can foreclose on your home or take your car or other property.

If you're considering a consolidation loan secured by your home, understand that the interest payments may not be deductible, unlike the original loan on your home. Ask a tax professional about deductibility if any of the following is true:

- the loans on your house will total more than your house is worth

- you want to use \$100,000 or more of the loan money on something other than your house, or
- you are subject to the alternative minimum tax.

**TIP**

You might be able to cancel the loan. If the consolidation loan is secured by your principal residence, you can cancel it for up to three business days after you sign the loan papers. See Chapter 3 for more information.

Finance companies and similar lenders also make unsecured consolidation loans—that is, they lend you some money without requiring that you pledge any property as a guarantee that you'll pay. But the interest on these loans often reaches 35% or more. They also charge all kinds of fees or require you to purchase insurance, often bringing the effective interest rate closer to 50%.

If you still want to take out a consolidation loan, you are better off borrowing from a bank or credit union than a finance company. Many finance companies engage in illegal or borderline collection practices if you default and are not as willing as banks and credit unions to negotiate if you have trouble paying. Furthermore, loans from finance companies may be viewed negatively by potential creditors who see them in your credit file.

**CAUTION**

Be careful when pledging your home. Think carefully about whether you want to convert

unsecured debts (for example, credit card debt) into debt that's secured by your home. If you can't make the payments on the secured debt, you could lose your home.

**TIP**

A good alternative to debt consolidators. A safer and less-expensive alternative is to find a reputable credit counseling agency. See Chapter 19 for more information.

Avoid Tax Refund Anticipation Loans

Although getting a tax refund fast is often a good way to get quick cash, you should probably avoid a refund anticipation loan (RAL). An RAL is a loan offered through a tax preparation company for the short period between the date when the taxpayer receives it and the date when the IRS repays it by depositing the taxpayer's refund into the lender's account (usually only a week or two). The amount of the loan is the amount of your anticipated refund minus the loan fees (which are often quite high) and the tax preparation fee. According to the National Consumer Law Center, for example, if your refund is \$3,300, the cost of the loan would range from about \$65 to \$120. In addition, tax preparation services often add fees of \$10 to \$55 or more for things like getting documents, getting your payment by check, or providing same-day service. That results in an effective annual percentage rate (APR) of about 72% for a one or two week loan! If you also paid a typical tax preparation fee of \$185, your total costs could be as much as \$305.

In addition to being extremely expensive, RALs also pose some risks. You must repay the loan even if your refund is denied, is less than expected, or is frozen. If you can't repay the loan, the lender may assign the debt to a collection agency. The unpaid debt will appear on your credit report. And, if you apply for an RAL again next year, the lender may take that refund to pay this year's unpaid RAL debt, even if you use a different lender or tax preparer.

It is usually better to be patient and wait for your refund, rather than pay the high fee for a tax refund anticipation loan. In most cases, you can file your return electronically and get the money within a week or two at most (by having the refund deposited directly into your bank account, for example). For more information on how to get a refund sooner see “Get Your Tax Refund Fast” earlier in this chapter. For answers to other tax questions, contact the IRS at 800-829-1040 (voice) or 800-829-4059 (TTY), or visit its website at www.irs.gov. If you haven't already adjusted your tax withholding to give you more money each payday instead of having to wait for the tax refund, see above, “Get Your Tax Refund Fast.”

Don't forget the free alternatives to RALs for low and moderate income taxpayers including the Volunteer Income Tax Assistance (VITA) program, AARP's TaxAide, and the online Freefile. (See “Free or Subsidized Government Services” above.) Some free tax preparation programs can also help you open a bank account into which your refund can be directly deposited.

Avoid Pawnshops

Visiting a pawnshop should be one of the last ways you consider raising cash. At a pawnshop, you leave your property—the most commonly pawned items are jewelry, electronic and photography equipment, musical instruments, and firearms. In return, the pawnbroker typically lends you approximately 25% to 60% of the item's resale value. The average amount of a pawnshop loan is about \$75–\$100.

You are given a short time, typically a few months, to repay the loan and are charged interest, often at an exorbitant rate. Although you borrow money for only a few months, paying an average of 10% a month interest means that you are paying an annual interest rate of 120%. Interest rates may vary from 12% to 300%, depending on whether state law restricts rates pawn shops can charge. You might also be charged storage costs and insurance fees.

If you default on your loan to a pawnshop, the property you left at the shop to obtain the loan becomes the property of the pawnbroker. You are usually given some time, typically 30 to 60 days, to pay your debt and get your property back; if you don't, the pawnbroker can sell it. In about a dozen states, if the sale brings in money in excess of what you owe on the loan, storage fees, and sales costs, you're entitled to the surplus. But don't count on getting anything.

Avoid Car Title Loans

A bank or other financial institution may agree to make a secured loan against the

value of your car, called a “car title loan,” “auto title pawn,” or “car equity loan.” You keep and drive the car, but the lender keeps the title as security for repayment of the loan, as well as a copy of your keys. These loans are dangerous, because missing even one payment can mean losing your car, even if the car is worth far more than the amount you owe. Lenders may also ask you to use your home, as well as your car, as collateral. This means that if you miss any payments, you risk losing your house as well as the car. These loans can come with a steep interest rate because your car is considered a used car and its value rapidly decreases. For example, you might pay \$63 to \$181 for a one-month \$500 title loan. Monthly finance charges of 25% (300% annual interest) are common.

Auto title loan businesses often target members of the military. Under federal law, creditors cannot charge active members of the military or their dependents more than a 36% annual percentage rate on a loan for 181 days or less on a vehicle when the creditor takes the vehicle’s title as security. (This limit does not apply to loans used to purchase the vehicle in the first place.)

Avoid Payday Loans

The payday loan industry is growing fast. In many states, these loans are illegal. In others, lenders may offer a similar type of loan, but call it something else. Think twice before you get one of these loans.

A payday loan works like this: Either you give the lender a check and get back an amount of money less than the face value of

the check, or you sign an agreement giving the lender the right to withdraw money from your bank account. For example, if you give the lender a postdated check for \$300, it may give you \$250 in cash and keep the remaining \$50 as its fee. The lender holds the check for a few weeks (often until your payday). At this time, you must pay the lender the face value of the check (\$300), usually by allowing it to cash the check. If you can’t make the check good, the lender requires you to pay another fee (\$50 in this example). At this point, you owe the lender \$350 (the \$250 borrowed plus the first \$50 fee, plus a new fee of \$50). The cost is the same if you give the lender the right to access your bank account instead of a check. The money you borrow (minus the lender’s fee) is deposited directly to your account and the payday lender withdraws the payment when due. If you need another loan that week, the lender charges an additional fee, and so on. Many people who can’t make the original check good get into a “treadmill of debt” because they must keep writing new checks or allow additional withdrawals from their account to cover the fees that have accumulated, in addition to paying off the amount borrowed. According to the Center for Responsible Lending, borrowers using payday lenders average nine loans per year. This means the typical borrower will pay more than \$800 to repay a \$325 loan. The annual percentage rate on even one payday loan is astronomical, ranging from 200% to 500% or more.

Payday loans have been a particular problem for members of the military in recent years. Federal rules limit to 36% the

annual percentage rate that lenders can charge active duty servicemembers or their dependents in extensions of consumer credit, including payday loans. This means, for example, that now a payday lender cannot charge a servicemember more than \$1.38 in interest on a \$100 loan for two weeks. Payday lenders are not permitted to roll over loans to military personnel or their dependents either, unless the new loan has more favorable terms, such as a lower interest rate.

Scams That Target Military Personnel

Companies that offer payday loans, refund anticipation loans, auto title (auto pawn) loans, and rent-to-own arrangements, as well as used car dealers that emphasize in-house financing, cluster around military bases and advertise inside bases in official-looking military newspapers.

As explained above, federal law regulates refund anticipation loans, car title loans, and payday loans to active duty personnel. The Servicemembers Civil Relief Act provides additional protections, as explained in more detail above and in Chapter 5.

Some states also have laws aimed at curbing payday loan abuses, including laws limiting interest rates to 36%. Even in states with laws regulating payday lenders, you should still beware of payday lenders affiliated with American Indian tribes. Generally, Indian tribes cannot be sued in state court. Some payday lenders offering

loans over the Internet associate themselves with an Indian tribe, claiming state laws do not apply to them. These lenders offer very high-cost payday loans and do not comply with state consumer protection laws.

A payday loan is a very expensive way to borrow money.

Avoid Bank and Credit Union Prepaid Cards With Advances

Some banks and credit unions offer “prepaid” cards that require you to automatically deposit your paycheck, government benefit, or tax refund in an account with the bank or credit union. The bank advances you money and then repays itself for the loan and its fees from the money automatically deposited in your account. Some of them charge very high interest rates—over 100%. If you count the “fees,” some have interest rates of over 300%.

Avoid “Easy Solutions” to Debt Problems

Watch out for television, radio, Internet, or direct mail ads that claim easy solutions to debt problems. Sometimes, you can’t tell exactly what these companies are offering.

Ads for Consolidation Loans

Some may turn out to be ads for expensive consolidation loans you should avoid, often with high interest rates, hidden fees, and security clauses that put property you already own at risk. (See “Avoid Consolidation Loans,” above.)

Ads for Unlicensed Bankruptcy Assistance

Others may be unlicensed people claiming they can eliminate your debts through bankruptcy; often, these services file incorrectly or don't follow through, which makes it harder for you to get bankruptcy relief if you need it.

Ads for Debt Relief Services

Many of the ads that promise to get you out of debt are for debt relief services. Some offer *debt management* or *credit counseling services*. These companies claim they can arrange a plan to pay back your creditors, often with reductions in interest rates or other favorable terms so you can afford repayment. *Debt settlement companies* (also called debt pooling or prorating services) claim they can greatly reduce your debts, often by 50% or more. They operate by negotiating with your unsecured creditors to get them to accept a reduced lump sum or fewer payments to pay off your debt. They usually ask or require you to make regular payments into an account with a bank from which they collect their fee and pay the creditor when enough money has accumulated. *Debt negotiation companies* claim they can get creditors to reduce your regular payments, but do not necessarily create an overall plan like credit counselors do.

In recent years the debt relief service business has boomed. The Federal Trade Commission and state attorneys general have sued hundreds of these companies for misleading consumers about what the company can accomplish or how much its

fees really are, and for violating consumer protection laws or specific state laws governing debt relief services. The IRS has ended the nonprofit status of a number of so-called nonprofit credit counseling companies that were making profits, either directly or through affiliates.

These companies claim to be able to get creditors to accept much less than what you owe, but what they really do is charge high fees to take your money and distribute it to your creditors—something you can do on your own.

No matter what they call their services, these companies generally produce poor results and charge very high fees and interest rates. They siphon off your limited resources in debt consolidation charges, pay only a few (if any) creditors, and jeopardize much of your property. What's more, many do not deal with your secured debts, which often are (or should be) your highest priority for repayment. These companies often induce people to devote precious resources to paying unsecured debts when folks should be using that money to pay secured debts.

These companies claim that they can negotiate with creditors on your behalf, promising substantially reduced payments and an end to collection calls from creditors. They charge hefty fees for this service, which most consumers can do on their own. Instead of helping you obtain relief and work your way out of debt, the debt negotiator may leave you with even more negative information in your credit report and being sued by collectors. In extreme cases, companies reportedly have used consumers' money to pay the company's operating

expenses instead of paying the consumers' creditors. Even if the company provides the services promised, you're better off using the money you would spend on the high fee to make payments to your creditors.

Almost all states regulate debt relief companies, and some states prohibit debt settlement companies from doing business. In addition, as of October 27, 2010, the Federal Trade Commission revised its Telemarketing Sales Rule to offer some limited protection against abusive for-profit debt relief companies. The rules only apply to for-profit companies, services related to unsecured debts, and services rendered after the debt relief company calls you or you call in response to an ad, not if the company communicates with you through the Internet or the mail.

Before you have to pay any money, the rules require debt relief service companies to disclose:

- how long will be needed to get the claimed results
- if the service includes a settlement offer, the date by which the company will make a settlement offer to any of your creditors, and the time by which it will make an offer to all of them

- the amount of money or percentage of each debt you will have to have accumulated before the company will make an offer
- if the service depends on you not timely paying creditors, the likely negative effect on your credit rating, the fact that you may be sued by creditors or debt collectors, and that the amount you may owe may increase because of interest and fees, and
- your right to cancel the contract for services and receive a refund within seven days of any money (not owed for services already provided) held in an account.

Most important, the new rules prohibit a company from collecting fees from you (or your account) until it has obtained an agreement to reduce at least one debt and you have made at least one payment on that agreement. The rules also place guidelines on fee amounts.

If you need help negotiating with creditors or debt collectors, see Chapter 19 for how to choose a legitimate credit counseling agency.

These state laws usually don't apply to lawyers and merchant-owned associations claiming to help debtors.



What to Expect When You Can't Pay Your Debts

Eviction	108
Repossession	109
What Constitutes a Default?.....	109
When You Have Defaulted	110
Can You Get Your Property Back?.....	112
Will You Still Owe the Lender? Deficiency Balances.....	113
Tying Up Property Before a Lawsuit	116
Prejudgment Attachment.....	116
Lis Pendens	117
Lawsuits	117
Lawsuits Against Third Parties Who Hold Your Assets	118
Liens on Your Property	118
Jail	120
Bank Setoff	120
Intercepting Your Tax Refund	120
Loss of Insurance Coverage	121
Loss of Utility Service	122

“The payment of debts is necessary for social order. The nonpayment is quite equally necessary for social order. For centuries, humanity has oscillated, serenely unaware, between these two contradictory necessities.”

—Simone Weil,
Jewish labor organizer and mystic,
1909–1943

This chapter discusses the consequences of just not paying your debts. This is not usually a recommended strategy, but it's one many people follow—at least for a while. It also may be your only option for nonessential debts that you can't pay.

If you ignore your creditors long enough, they will probably take legal action to try to get either the money you owe, secured property you pledged to guarantee repayment, or other of your property. You may lose some property, including your bank accounts, your car, a portion of your wages—and possibly your house.

But it's not always as bad as you might think. Exemption laws protect essential property such as your clothing, public benefits, household goods, and most of your wages. (See Chapter 16 for more information.) And most important, for all debts (except possibly child support), no matter how much you owe, you won't lose your liberty unless you do something foolish that infuriates a judge, such as deliberately disobeying an order or lying in court or in a court document.

After reading this chapter, you should know where you are most vulnerable—that is, where you are most likely to lose some

property if you don't pay a debt. Review Column 6 of your Worksheet 2, which shows whether debts are top, medium, or low priority. If not paying a debt you've been thinking of as low priority means you'll probably lose something you really need, move that debt to the medium- or high-priority list and rethink your strategy.

Eviction

If you don't have a legal reason for not paying your rent, your landlord can evict you. In many states, an eviction can take as long as a month or two. In other states, where the courts are not so busy or the laws favor landlords, the process can be as short as a couple of weeks. In every state, however, the landlord must begin by giving you a notice to pay or get out. If you do neither, the landlord can file a lawsuit. You then have a set number of days to respond (five is common), and then a week or two later the court holds a hearing.

Even if you ignore the lawsuit and the landlord gets a default judgment against you, the landlord must take that judgment to the local sheriff. Many states require that the sheriff give you a few days to a week's advance notice of when the eviction is scheduled. If you're not out by the selected day, the sheriff comes and gives you the boot.

Evictions don't always take a month, however. In states or communities that have few protections for tenants, an eviction can take place even faster. The landlord gives you just a few days' notice to pay what you owe or defend in court, or you'll be on the street.

And no matter where you live, a landlord can sue you for the back rent you owe.

Once you've been evicted, it will be harder for you to rent a new place once you're back on your feet. Specialized credit bureaus, often called tenant-screening agencies, collect information from court records on eviction actions and report it to landlords when they check on prospective tenants. Most landlords consider being evicted, or even having an eviction action filed against you, a significant blot on your tenant history. You can get your eviction report once a year at no cost from any nationwide credit agency that reports evictions. Two of the largest are LexisNexis (formerly ChoicePoint) (for information visit its website at <https://personalreports.lexisnexis.com> and click on "Residential History Report," or call 877-448-5732), and CoreLogic SafeRent (formerly First Advantage Safe Rent) (for information visit its website at www.fadvsafere.com and click on "Consumer Relations," or call 800-815-8664.) See Chapter 17, "Clean Up Your Credit Report."



CAUTION

Find out the local rules. Landlord-tenant laws vary tremendously from state to state and even city to city. If paying your rent is a problem, get some help from a tenants' advocacy or other consumer group. Also, see *Every Tenant's Legal Guide* or *Renters' Rights*, both by Janet Portman and Marcia Stewart (Nolo), which suggest ways to deal with late rent and what happens in an eviction. If you think you have a defense to not paying your rent—for example, your living conditions are substandard—you can find out

whether your state allows you to move out, withhold the rent, or repair the problem yourself and deduct the cost from the rent.

Repossession

A secured debt is one for which a specific item of property—called a security interest or collateral—guarantees payment of the debt. If you don't pay a debt secured by personal property, the creditor has the right to take the property pledged as collateral for the loan. The creditor can't just walk into your house and take your couch, however. The creditor must have a court order or permission from someone in your household to enter your home.

Creditors who don't have a security interest in an item of property can't take it without approval of a judge or court clerk.

What Constitutes a Default?

Unless your contract says otherwise, if you miss even one payment, you have defaulted on your loan and, under most security agreements, the creditor is entitled to take the goods. If you make your payments but otherwise fail to comply with an important term of the security agreement, the creditor can also declare you in default and take the property. Sometimes lenders have the right to declare a secured debt in default, even if you're all paid up. This may happen in any of the following cases:

- You sell the collateral.
- The collateral is destroyed or stolen, or its value substantially depreciates.

- You let required insurance lapse—some lenders require that you have collision and comprehensive insurance on motor vehicles, or that you buy credit life or credit disability insurance.
- You become insolvent (as defined by your lender).
- You refuse to let the creditor examine the collateral at its request.
- The creditor feels that the prospect of your paying is uncertain.

Be sure to read the security agreement's fine print carefully to see what is considered a default.

When You Have Defaulted

Whether a creditor has to notify you before it takes your property depends on what state you live in and on the terms of your original agreement with the creditor. Generally, unless the contract specifically says otherwise, the creditor must notify you that it has accelerated the debt and that the full contract amount is due. This warning can give you time to figure out a plan. However, in many contracts, you waive the right to receive advance notice. In some cases you can challenge these waiver clauses, but you will likely need the assistance of an attorney to do so.

Fortunately for consumers, many states require creditors to notify you of a “right to cure” the default. If you want to take advantage of the “right to cure,” you must do so before the debt is accelerated and the property is repossessed. You get a certain period of time (usually a few weeks) to pay all missed payments and any late charges,

get required insurance, or otherwise rectify the situation that caused the default. You will need to research your state law to see if you have a right to cure where you live. (See Chapter 19 for information on how to research your state law.)

A few states prohibit creditors from repossessing property without first getting a court order. But even outside of these states, a creditor is unlikely to go ahead and take your property (except perhaps motor vehicles) unless you have defaulted in the past, have missed several payments, or are uncooperative, or the creditor has learned something worrisome about your finances.

You can voluntarily return the collateral, but the creditor doesn't have to take it. And he or she probably won't if it's worth far less than you owe. If you want to give the property back, first call the creditor—ask to speak to someone in the collections department—and find out whether your entire debt will be canceled when the collateral is returned. If the creditor agrees to cancel the entire debt, get written confirmation. Also find out whether the creditor will refrain from reporting the default on your credit report. If the entire debt isn't canceled, there probably isn't much point in returning the item, as you'll be liable for the difference between what the collateral sells for and what you owe.

How Motor Vehicles Are Repossessed

The first property most lenders go after is a motor vehicle, especially if it's still pretty new. In a number of states, however, the lender must first send you notice of the

default and give you the right to make up the payments, called a right to “cure,” before repossessing your car.

In addition, a repossession company generally can't use force to get to your vehicle—repossessions must occur without any breach of the peace. Unfortunately, “breach of the peace” is defined very broadly. It's usually legal for a reposessor to hotwire a car. It's legal to use a duplicate key and take a car. Most courts have said it's legal to remove a car from a carport or an open garage (meaning the door is up). In most states, it's legal to take a car from a garage if the door is closed but unlocked, but a few cautious repossessors won't do this. It's generally illegal to break into a locked garage, even by using a duplicate key. But a reposessor might anyway, especially in parts of the country where the repossession won't be nullified and all the lender will be required to do is fix the lock.

To take your car, the repossession company will have to find it. The lender will supply the reposessor with your home and work addresses, and any other useful information (such as where you attend school). Many vehicle purchase and lease agreements today authorize the lessor to use the vehicle's electronic locating device to locate the vehicle. If the reposessor finds the car in your driveway or on the street in front of your house, the reposessor will wait until you're asleep or out, use a master key or hotwire it, and then drive away.

If the car isn't near your house, the reposessor will search the neighborhood. Many debtors, fearful of having their car repossessed, park it about three blocks from

their home. This is the distance they figure is far enough away to be hard to find, but close enough to still be convenient to use. Repossessors know this trick, however, and often find a car within ten minutes. If you hide your car and a court finds that you acted in bad faith, you may lose your right to get the car back if and when it's finally found.

Although it might seem otherwise, the repossession company does not have unlimited power to take your car. If you or someone else (like a relative) objects at the time the reposessor tries to take your car, so that taking the car would breach the peace, he or she must stop. However, this doesn't mean you get to keep your car. The reposessor can try again another day or get a court order to take the car. A word of warning—over the past several years, some consumers and agents attempting to repossess cars have reportedly been injured or killed, and children have been hauled away when the car was repossessed. Don't put yourself or others in danger just to keep your car. No car is worth an altercation that could escalate to physical harm.

How Other Property Is Taken or Repossessed

Few creditors try to take back personal property other than motor vehicles, for these reasons:

- The loan is often for only a few thousand dollars or less.
- The property may be worth far less than you owe.
- The reposessor will have a hard time getting into your house.

A few major department stores encourage debtors to return property. If the property is less than a year old, ask if they'll credit your account for 100% of what you owe if you return the property voluntarily. This means that your entire balance is wiped out, even if the property is worth less than the amount you owe.

If the lender hires repossessioners to take back the property, you don't have to give it back or let them into your house unless a sheriff shows up with a court order telling you to do so. If, however, the property is sitting in the backyard—for example, a new gas barbecue and lawn furniture—it's generally fair game. But the repossessioner can't use force to get into your house or to take your backyard furniture—for example, you can't be thrown out of a lawn chair. Some repossessioners will jump a fence or even pick a lock, but most won't enter the premises unless they are invited or have a court order. Entering your house when you are away with a duplicate key to take your refrigerator or living room sofa is illegal.

As with car repossessions, if you or a member of your family ask the repossessioner to leave your property, and the repossessioner doesn't, this is a breach of the peace. So is using abusive language or violence or showing up with a gun-carrying sheriff in an effort to intimidate you. But lying or tricking you usually isn't a breach of the peace.

Can You Get Your Property Back?

You may be able to get your property back by reinstating the contract or redeeming the property.

Reinstatement

If your car or other property is taken, some states give you a short time during which you can get it back by reinstating the contract. Reinstatement means getting the property back and resuming the payments under the terms of the original agreement. In order to reinstate, you must fix the problem that caused the creditor to declare the default—for example, by paying all past-due payments and late fees, getting required insurance coverage, or paying unpaid fines or taxes—and pay the costs the lender has incurred in taking and storing the property, often several hundred dollars. The right to reinstate is limited, however, and, depending on your state law, you probably can't get the property back if you:

- had the contract reinstated in the past
- lied on your credit application
- hid the property to avoid repossession, or
- didn't take care of the property and its value has substantially diminished.

Under state laws, ordinarily, the lender must give you notice of your right to reinstate the contract after repossession, even if the lender thinks you have given up the right. If the lender doesn't give you this notice, you may have the right to get the property back for nothing—but you will have to resume making payments on your loan. If you have been given notice and want to try to reinstate the contract, contact the lender as soon as possible to work out an agreement.

If you don't reinstate the contract within the time permitted by the agreement, the

lender will send you a formal notice of its intent to sell the property.

Personal Belongings in Repossessed Vehicles

If the reposessor takes your motor vehicle, you're entitled to get back all your personal belongings inside of, but not attached to, the vehicle when it was repossessed. This means that you can get back your gym shorts, but not the \$500 stereo system you installed. (You are entitled to a removable radio, however.) Also, make sure you look at your loan agreement. Some say that you must make that request within 24 hours of the repossession. Although such time limits may not hold up in court, it's safest to act quickly. Promptly contact the lender after your vehicle is repossessed and ask that your property be returned. Put the request in writing and list everything you left in the car. If the lender is uncooperative—which is unlikely—consider suing in small claims court.

Redemption

Every state allows you to redeem the property—to pay the entire balance to get the property back. To redeem property, you must pay not only the entire balance of the contract (instead of just the past amounts due), but also repossession and storage costs. You can redeem property within the time allowed, which is usually up to shortly before it is sold.

Redemption is rarely feasible. If you couldn't make payments in the first place, you probably can't come up with the entire balance due under the contract. Some people take out a home equity loan to get the money. This is dangerous: If you default on the home equity loan, you might end up losing your house instead of the personal property. Redemption might make sense if the property, such as your car, is essential to your livelihood and you can get someone to help you come up with the money to redeem it.

Will You Still Owe the Lender? Deficiency Balances

If you don't reinstate or redeem the property by the deadline, it will be sold. If the proceeds don't cover the total of what you owe—and they never do—you may be liable for the balance, called a deficiency.



SKIP AHEAD

If you're planning to file for bankruptcy. If you're planning to file for bankruptcy, you probably don't have to worry about any deficiency—it will likely be wiped out in your bankruptcy case. (See Chapter 15)

Although laws differ among states, generally, the lender must send you a notice that the property will be sold and must give the date, time, and location of the sale. The notice must also tell you whether you are liable for any deficiency and must provide a phone number where you can find out how much you still owe. You are entitled to attend the sale and bid. There are two

kinds of sales: a public sale, which is open to anyone; or a private sale, to which the lender invites only certain people who it feels might be interested. A private sale can only be held if the item “is of a type customarily sold in a recognized market” or “is the subject of widely distributed standard price quotations.” Cars are frequently sold at private sales to which used car dealers and others who regularly buy repossessed cars are invited. If the notice doesn’t give you the date and location of the sale, call the lender and find out.

The law requires that the lender conduct every aspect of the disposition of the vehicle in a “commercially reasonable” manner, but that may be interpreted differently in different courts. In fact, repossession sales are often attended only by used car dealers, who have a motive to keep the bids very low. This is one reason why most property sold at repossession sales brings in far less than the lender is owed. For instance, a car valued at \$12,000 might sell for \$5,000, and a refrigerator worth \$800 might sell for \$250. And even though you could have sold the item for much more, the sale usually will be considered “commercially reasonable.” If you attend, you can bid (if you have the cash), but the dealers are apt to outbid you.

After the item is sold, the sale price is subtracted from what you owe the lender. Then, the cost of repossessing, storing, and selling the property is added to the difference. Very often, you are liable for that balance: the deficiency balance.

Here’s one suggestion for avoiding a deficiency balance: If your property, especially a motor vehicle, is about to be

repossessed, ask for a contract reinstatement just to get the vehicle back so you can sell it yourself. Even if you get \$7,000 for a \$9,000 car, it’s better than the lender repossessing it and selling it for \$3,000. You can use the \$7,000 to pay off your lender and will owe only \$2,000 more, far less than the \$6,000 you’d owe if the lender sold it through repossession.

Some lenders will forgive or write off the deficiency balance if you clearly have no assets. Where the amount forgiven is \$600 or more, the lender will issue you a Form 1099-C or 1099-A, and the IRS will expect you to report the forgiven balance as income on your tax return. (See Chapter 5, “Beware of the IRS If You Settle a Debt.”)

If the lender doesn’t forgive or write off the balance, expect dunning letters and phone calls, probably from a collection agency.

As you can see in the following table, in half the states you won’t be liable for a deficiency balance on the kinds of transactions indicated or if the amount still owing or that you originally paid is less than a few thousand dollars. (If your state is not listed, it does not place additional limits on deficiency balances after repossession.) Given the price of cars, you will almost always be liable for a deficiency if a motor vehicle is taken.

If a lender sues you instead of repossessing the property, you are not likely to be liable for any deficiency.

It is common for creditors to make mistakes in the repossession process. Most states bar creditors from collecting a deficiency balance if they fail to comply with notice requirements (such as notifying you of the

Are You Always Liable for Deficiency?

State	Code Section	When a Deficiency Balance Is Prohibited
Alabama	Ala. Code § 5-19-13	If you paid \$1,000 or less for the collateral
Arizona	Ariz. Rev. Stat. § 44-5501	If you paid \$1,000 or less for the collateral
California	Cal. Civil Code § 1812.5; Cal. Health & Safety Code § 18038.7	If you bought goods on installment. On purchase-money mortgage for a mobile home, manufactured home, commercial coach, truck camper, or floating home (does not include loans not used to purchase the property, such as home equity loans or refinanced loans).
Colorado	Colo. Rev. Stat. § 5-5-103	If you paid \$3,000 or less for the collateral
Connecticut	Conn. Gen. Stat. § 36a-785(f),(g)	All repossession sales except for cars or boats with a cash price over \$2,000
Dist. of Col.	D.C. Code Ann. § 28-3812(e)	If you paid \$2,000 or less for the collateral
Florida	Fla. Stat. Ann. § 516.31(3)	If you paid \$2,000 or less for the collateral
Idaho	Idaho Code § 28-45-103(3)	If you paid \$1,000 or less for the collateral
Indiana	Ind. Code Ann. § 24-4.5-5-103; 750 Ind. Admin. Code § 1-1-1	If you paid \$3,500 or less for the collateral
Kansas	Kan. Stat. Ann. § 16a-5-103	If you paid \$1,000 or less for the collateral
Louisiana	La. Rev. Stat. Ann. § 13:4108.2	If the seller does not get an appraisal before the sale, unless you have agreed in writing to a sale without an appraisal
Maine	Me. Rev. Stat. Ann. tit. 9-A § 5-103	If you paid \$2,800 or less for the collateral
Maryland	Md. Com. Law §§ 12-626, 12-115	If you paid \$2,000 or less for the collateral
Massachusetts	Mass. Gen. Laws ch. 255, § 13J(e)	If the unpaid balance is under \$2,000
Minnesota	Minn. Stat. Ann. § 325G.22	If the amount financed was \$6,600 or less
Missouri	Mo. Rev. Stat. § 408.556	If the amount financed was \$500 or less
Nebraska	Neb. Rev. Stat. § 45-1054	If the unpaid balance is \$3,000 or less
Oklahoma	14A Okla. Stat. Ann. § 5-103	If you paid \$4,500 or less for the collateral
South Carolina	S.C. Code Ann. § 37-5-103	If you paid \$5,150 or less for the collateral
Utah	Utah Code Ann. § 70C-7-101	If you paid \$3,000 or less for the collateral
West Virginia	W.Va. Code Ann. § 46A-2-119	If the unpaid balance is \$1,000 or less
Wisconsin	Wis. Stat. § 425.209	If the unpaid balance is \$1,000 or less
Wyoming	Wyo. Stat. Ann. § 40-14-503	If you paid \$1,000 or less for the collateral

right to cure or of the sale) or didn't sell the property in a commercially reasonable manner. If you think the creditor made a mistake, you must raise this defense at the time you are sued for the deficiency balance. Because these cases can be complex, it's a good idea to consult a lawyer.

If the creditor sues you, you should file an answer with the court. Your first line of defense is to review how your repossession was handled. You can argue that the creditor isn't entitled to a deficiency if it didn't inform you about your right to cure the default or redeem the property (if you live in a state where you have these rights), didn't sell the item in a commercially reasonable manner, or didn't give you the date and location of the sale.

If you'd rather take the offensive, you can sue the lender for wrongful repossession. For large items, such as cars, you'll probably need a lawyer. But for smaller items, you can probably represent yourself in small claims court. (See Chapter 14 for more information.)

Tying Up Property Before a Lawsuit

There are two ways that a creditor can tie up your property before getting a court judgment: prejudgment attachment and lis pendens.

Prejudgment Attachment

Prejudgment attachment is a legal procedure that lets a creditor tie up property before obtaining a court judgment. It is the

unsecured creditor's way of telling the world that the property covered by the attachment can be used to pay the creditor if it wins in court. (*Secured creditors* don't need to attach your property, because they can just repossess it if you don't pay. See "Repossession," above.)

Creditors may especially try to attach your property if you live out of state or have fled the state, or if the creditor believes you are about to spend, sell, or conceal your property.

In most states, a prejudgment attachment works like this: When the creditor is about to sue you, it prepares a document called a "writ of attachment," listing the property you own that it believes you are hiding or about to sell, or that someone else is keeping for you. In some states, the creditor must file a bond in order to get a writ of attachment. The writ of attachment must be approved by a judge or court clerk. Writs are usually approved as long as there is no dispute that the property to be attached is yours. Then the creditor serves it on you and on everyone it thinks has some of your property. (Serving means providing a copy.) Usually, you must be hand-delivered a copy, but in some cases, the creditor can just mail it to you. The most common property to attach is a deposit account: savings, checking, money market, certificate of deposit, and the like.

Serving the writ freezes your property—the holder of your property can't let you sell it, give it away, or, in the case of deposit accounts, make withdrawals. You must be given the opportunity to have a prompt court hearing. This isn't the trial where you

argue whether or not you owe the debt. This hearing pertains only to the attachment, and you'll want to argue that the attached property is exempt (see Chapter 16), you need the property to support yourself and your family, or the value of the property attached exceeds what you owe.

If you don't attend the hearing or you lose the hearing, the court will order that the attachment remain on your property pending the outcome of the lawsuit. You won't be able to withdraw or otherwise dispose of any of the attached property. You can get the attachment released by filing a bond for the amount of money you owe. But if you don't file a bond, and the creditor wins the lawsuit, the judgment is almost certain to be paid out of the attached property. Prejudgment attachment is not available in some states (California, for example), if the claim is based on a consumer debt.

Lis Pendens

A lis pendens is similar to a prejudgment attachment because it prevents you from selling or mortgaging the property until the court rules on the lawsuit. It is different from a prejudgment attachment because a lis pendens can only be used if title to the particular property is the subject of the lawsuit, for example, if both you and your spouse in a divorce proceeding have a claim to ownership of the family home. The lis pendens is typically recorded with a county land or real estate records office so it provides notice to purchasers and creditors that the property is subject to a pending claim; so the title is not "clear."

Lawsuits

If you don't pay a debt, and the debt is not secured by particular property, the most likely consequence is that you will be sued, unless the creditor thinks you are judgment proof or decides not to sue for other reasons. Being judgment proof means that you don't have any money or property that can legally be taken to pay the debt and aren't likely to get any soon. But because most court judgments last many years (up to 20 years in some states), and can often be renewed indefinitely, people who are broke may nevertheless be sued on the creditor's assumption that someday they'll come into money or property. Similarly, very old people or people with terminal illness who are judgment proof may get sued by their creditors simply because the creditors know that it's easier to collect the debt at death (through the probate process) if they have a judgment than if they don't.

Being judgment proof doesn't mean that you have no money or property at all. It just means that if a creditor obtains a court judgment, you are allowed to keep all of your property because it is "exempt." Each state has declared certain items of property beyond the reach of creditors—these items are called exempt property. (Exempt property is covered in detail in Chapter 16.) Suffice it to say that if you receive no income except government benefits, such as Social Security or unemployment, and have limited personal property and no real estate, you are probably judgment proof. There are a few important exceptions to this general rule. For example, most government agencies

are permitted to collect debts owed to them by taking a percentage of certain federal benefits, such as Social Security.

If a creditor sues you in regular court (as opposed to small claims court) and you fight it, the lawsuit can take time—often several years—to run through the court system. If you don't oppose the lawsuit, or you let the court automatically enter a judgment against you (called a default judgment), the case could be over in 30 to 60 days.

If the creditor gets a judgment, it has a number of ways to enforce it. If you are working, the most common method is to attach your wages, meaning that up to 25% of your take-home pay is removed from your paycheck and sent to the creditor before you ever see it. The next most common method to collect a judgment is to seize your deposit accounts. Chapter 14 contains details on getting sued and defending against judgment collections.

Lawsuits Against Third Parties Who Hold Your Assets

If a third party holds property for you or owes you money, most states give creditors the right to sue those third parties to get your property or money. Sometimes that third party is a financial institution, such as a bank, savings and loan, or credit union, where you have a deposit account. It might be a landlord or utility company to whom you've made a security deposit. Or it could be a financial adviser, such as a stock broker, with whom you've deposited funds to invest on your behalf.

In a few states, a creditor can't pursue a third party until it has obtained a court judgment against you and tried to collect. In most states, however, the creditor can sue the third party even before winning a lawsuit against you. If that happens, you will have to be notified of the suit and allowed the opportunity to contest the debt.

Liens on Your Property

A lien is a notice attached to your property telling the world that a creditor claims you owe it some money. A lien is typically a public record. It is generally filed with a county records office (for real property) or with a state agency, such as the secretary of state (for cars, boats, office equipment, and the like). Liens on real estate are a common way for creditors to collect what they are owed. Liens on personal property, such as motor vehicles, are less frequently used but can be an effective way for someone to collect. To sell or refinance property, you must have clear title. A lien on your house, mobile home, car, or other property makes your title unclear. To clear up the title, you must pay off the lien. Thus, creditors know that putting a lien on property is a cheap and almost guaranteed way of collecting what they are owed—sooner or later.

Generally, creditors have the right to have the property sold to pay off the lien, usually by way of a foreclosure sale. However, except for tax liens (see below), they rarely do so. This is because in most cases your mortgage was placed on the property before the liens and so must be paid off before any

liens are paid. If the creditor forecloses on the lien, it has to keep up the payments on the mortgage or lose the property. Instead of forcing a foreclosure sale, creditors usually wait until the property is sold. Buyers often won't buy the property unless the title is clear, meaning it has no liens. So, the seller will use part of the purchase price to pay off the lien.

A creditor usually can place a lien on your real estate—and occasionally on personal property—after it sues you and wins a court judgment. But many creditors have a right to place a lien on your property without filing a lawsuit. Here are examples of other property liens:

- **Property tax liens.** Usually, a property tax lien takes priority over all other mortgages or liens on the property, even if the property tax lien was placed on the property later. If you do not pay your taxes, to protect its mortgage, the lender will usually pay the taxes and add that to your mortgage debt. If the taxes are not paid, the government can have your property sold to pay the property taxes. The government must follow whatever procedure the state prescribes, and you may have the opportunity to pay the taxes and costs and get your property back even after the “sale.”
- **IRS liens.** If you fail to pay back taxes after receiving notices from the IRS, it may place a lien on all of your property, especially if you're unemployed, self-employed, or sporadically employed and the IRS would have trouble attaching your wages. Many creditors with property liens simply wait until the house is sold or refinanced to get paid. The IRS, however, doesn't like to wait and may force a sale if the amount you owe is substantial. For more information on dealing with IRS liens, see *Stand Up to the IRS*, by Frederick W. Daily (Nolo).
- **Child support liens.** If you owe a lot in child support or alimony, the recipient may put a lien on your real estate. The lien will stay until you pay the support you owe, until you sell or refinance your property, or until the recipient forces a lien sale, whichever happens first. (See Chapter 13.)
- **Mechanic's liens.** If a contractor works on your property or furnishes construction materials to be used on your property, and you don't pay up, the contractor can record a lien on your property called a mechanic's lien. In most states, the contractor must record the lien within one to six months of when the contractor wasn't paid. The contractor then must sue you to enforce the lien within about one year (the range is one month to six years, depending on the state). If the contractor wins the lawsuit, the contractor may be able to force the sale of your home.
- **Family law real property lien.** In California, in a marital action a spouse may file a lien against his or her interest in community real estate to secure payment of attorney fees in the action. The lien affects only the filing spouse's interest in the property. (Cal. Fam. Code § 2033.)

Jail

Jailing someone for not paying a debt is prohibited in most instances. In a few situations, however, you could land behind bars.

You willfully violate a court order. This comes up most frequently when you fail to make court-ordered child support payments, the recipient requests a hearing before a judge, and the judge concludes that you could have paid but didn't. (See Chapter 13.) In a few states, a court can order you to make periodic payments on a debt. If you can pay some portion of the arrearage and arrange for ongoing payments, you can probably avoid jail—the judge would rather see the money paid than see you in jail not earning money. If you continue to refuse, though, you may be facing a jail term.

You refuse to pay income taxes. This is a crime, and if you're convicted you could go to jail.

You don't show up for a debtor's examination. A debtor's examination is a procedure where a judgment creditor, with court approval, orders you to come to court and answer questions about your property and finances. (See Chapter 14.)

Bank Setoff

A bank setoff happens when a financial institution such as a bank, savings and loan, or credit union removes money from a deposit account—checking, savings, certificate of deposit, or money market account—to cover a payment you missed on a loan owed to that institution.

There are a few limitations on bank setoffs. For instance, most courts have said that banks cannot use setoffs to take income that is otherwise exempt under state or federal law (such as Social Security benefits, unemployment compensation, public assistance or disability benefits). (See Chapter 16 for information on exempt property.) In addition, financial institutions cannot take money out of your account to cover missed consumer credit card payments, unless you previously authorized the bank to pay your credit card bill by automatic withdrawals from your account. (15 U.S.C. § 1666h; Regulation Z of the Truth in Lending Act, 12 C.F.R. § 226.12(d).)

Some states impose limits on bank setoffs as well. For example, with limited exceptions, California prohibits state-chartered savings and loan setoffs if the aggregate balance of all your accounts with the financial institution is under \$1,000. (California Financial Code § 6660(b).) And in Maryland, all bank setoffs for debts for the purchase of consumer goods are prohibited unless you have explicitly authorized the setoff or a court has ordered one. (Maryland Commercial Law § 15-702.)

Intercepting Your Tax Refund

If you are in default on student loan payments or behind in income taxes or child support, the agency trying to collect can request that the IRS intercept your federal income tax refund and apply the money to your debt.

Before the IRS takes your money, the agency must notify you. You can present written evidence or have a hearing to show that any of the following is true:

- Your debt has been paid.
- The amount of the proposed intercept is more than you owe.
- The intercept is not legally enforceable.

If the intercept is for a student loan, you can make a written request to review the agency's file on your loan and the agency seeking the offset will consider other information, such as information showing you qualify to have your loan discharged because the school closed, falsely certified your eligibility, or failed to pay refunds owed because you left before completion of the course. (See Chapter 12.)

If you are married and the intercept is for child support from a previous relationship, your spouse can file a claim for her share of the refund.

Tax refund intercepts are most common in the case of a defaulted student loan. Each year, for example, the federal government pockets hundreds of millions of dollars by grabbing tax refunds from hundreds of thousands of former students. (For more on student loan collections, including stopping or avoiding tax refund intercepts, see Chapter 12.)

If your tax refund is small, you will have less to lose from an intercept. See Chapter 6 for suggestions on increasing the money you receive with your paycheck during the year, so your tax refund at the end of the year is not that large.

Loss of Insurance Coverage

If you miss payments on any insurance policy, your coverage will end. Most insurance companies give you a 30-day grace period—that is, if your payment is due on the tenth of the month and you don't pay until the ninth of the following month, you won't lose your coverage. A few companies may let you get away with 60 days, but don't count on it. After 60 days, your policy is sure to lapse.

Even before your insurance lapses, if your lender required you to obtain the insurance as a condition of your loan, which is common on credit for automobile purchases, for example, you could face more than a canceled insurance policy. The lender could declare you in default of your loan and either repossess your personal property or foreclose on your house.

However, it is more likely that the lender will get an insurance policy for you and bill you or add the cost of the premiums to your debt. This is called "force-placed insurance." Often, lenders will require consumers to pay for coverage that is not actually required by the credit agreement, which can end up being very expensive. The lender may also fail to notify you before it gets this insurance and bills you for it. These types of practices may violate your state Unfair and Deceptive Acts and Practices statute (Chapter 3 explains these laws) and other laws.

In states that require you to have automobile insurance to drive or register a car, if your insurance lapses, you are violating the law if you continue to drive. Some insurers provide evidence of insurance (or

cancellation of insurance) electronically to the state's motor vehicle department. The department can suspend your vehicle registration if it learns you no longer have insurance. You may have to pay a fee to get your car registered again, and you may be cited, fined, and even have your car towed if you are stopped while driving without insurance. If you get into an accident, you could also lose your driver's license.

Loss of Utility Service

If you miss payments on a utility or telephone bill, the company will try to cut off your service. If the utility company is publicly owned, it usually must give you

notice of the disconnect and the opportunity to discuss any dispute about the bill with a company representative. (*Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1 (1978).) In most states, a private utility company doesn't need to give you any notice. (California is one of a handful of exceptions to this rule.)

In some states, private utilities are also required to give notice or follow other rules before cutting off service. For example, in most northern states, utility companies are not allowed to shut off heat-related utility services to residential customers between November 1 and March 31. In many other states, there are limits to when a utility company can shut off utilities for elderly or disabled residents and, occasionally, for households with infants.



Reducing Mortgage Payments and Dealing With Foreclosure

Foreclosure	124
The Difference Between Judicial and Nonjudicial Foreclosure.....	124
Loan Servicers	124
Overview of Nonjudicial Foreclosure.....	125
Time to Cure Default	125
Loan Acceleration/Notice of Sale.....	125
Judicial Foreclosures	126
The Sale.....	126
Defenses to Foreclosure	128
Watch Out for Deficiency Balances	130
Alternatives to Foreclosure	131
Barriers to Negotiation	131
Tips for Negotiating With Lenders	132
Short-Term Informal Payment Plans	133
Federal Programs for Homeowners Facing Possible Foreclosure	133
Home Affordable Unemployment Program (UP).....	134
Home Affordable Refinance Program.....	135
Hope for Homeowners Program.....	135
Home Affordable Modification Program	136
Second Lien Modification Program.....	138
Mortgage Workouts	140
Refinancing.....	141
Selling Your House	144
Short Sales and Deeds in Lieu of Foreclosure	144
Short Sales.....	144
HAFA Short Sale Program	144
Deed in Lieu of Foreclosure.....	146
HAFA Deed in Lieu of Foreclosure Program	146
Other Programs to Help Homeowners.....	147

“A man builds a fine house; and now he has a master, and a task for life; he is to furnish, watch, show it, and keep it in repair, the rest of his days.”

—Ralph Waldo Emerson,
American lecturer, essayist, and poet,
1803–1882

About 3.5 million homeowners were expected to receive foreclosure notices in 2010 and about 1.1 million were expected to lose their homes to foreclosure. If you are having trouble keeping up with your mortgage payments, you are certainly not alone. And because of that, there are a variety of programs that can help if you are behind on your house payments or facing foreclosure. In this chapter we’ll walk through the foreclosure process and then we’ll look at strategies to deal with high mortgage payments and possible foreclosure.

Foreclosure

If you get behind on your mortgage or home equity loan payments, the lender has the right to foreclose—force a sale of your house—to recover what you owe. But mortgage lenders don’t always foreclose, even if they have the right. Foreclosing can be expensive and time-consuming, and the house often sells for only a part of what is owed.

The Difference Between Judicial and Nonjudicial Foreclosure

There are two types of foreclosure: judicial and nonjudicial. They are vastly different. A judicial foreclosure requires the creditor to file an action in court, which typically gives you a year or more before you have to part with your property. Nonjudicial foreclosures do not go through a court and often can be carried out within a three- to four-month period.

Why do some foreclosures go through court while others don’t? It depends mostly on where you live. If you’ve defaulted on payments on a real estate loan that is secured by a deed of trust, the foreclosure process often occurs outside of court—that is, nonjudicially. On the other hand, if the foreclosure stems from a true mortgage or creditor’s judgment against you in a lawsuit, the foreclosure probably will end up in court. (See “Mortgages and Deeds of Trust,” below.)

The judicial foreclosure process varies enormously from state to state, while the process for nonjudicial foreclosures tends to be more standardized.

Loan Servicers

The company that initiates the foreclosure is not necessarily the company that actually owns your home loan. Instead, it may be a loan “servicer.” Many home loans are owned by many different investors. Typically, the servicer has a contract with the investors to represent them when dealing with the borrower. The servicer receives and

processes your payments. Generally, you must deal with the servicer if you become late on your payments or a foreclosure process is started. Because the servicer represents the lender, for convenience, in this chapter we'll usually refer to both the servicer and the lender as the "lender," except when the distinction between the two is important.

Mortgages and Deeds of Trust

Some home loans are true mortgages. Others are secured by a deed of trust. Here's the difference:

Mortgage. A loan in which you put up the title to real estate as security for the loan. If you don't pay back the debt on time, the lender can foreclose on the real estate and have it sold through a court proceeding to pay off the loan.

Deed of trust. An alternative method of financing a real estate purchase. The deed of trust transfers the title to the property to a trustee, often a title company, who holds it as security for a loan. If you default on the loan, the trustee can sell the property at auction and pay the lender from the proceeds without going to court. In some states the lender can choose whether it wants to use the auction process or the court process. Deeds of trust are often used in the West.

Even though mortgages and deeds of trust are different, except when it makes a legal difference, most people commonly refer to both as mortgages or home loans.

Overview of Nonjudicial Foreclosure

The nonjudicial foreclosure process normally starts with a notice of default. If you don't pay or contact the lender to discuss your situation, after about 60 to 90 days the lender will typically send you a formal notice telling you that your loan is in default. This notice, often called a Notice of Default, states that foreclosure proceedings will begin unless payment is received.

These notices are required by state law. Some states also require lenders to attempt to contact you by phone, before sending the notice. Although lenders do not have to wait 60 to 90 days to start the process, most do. Generally, the lender is also required to make the notice public, for example, by publishing it in a newspaper.

Time to Cure Default

After you get the notice of default, you usually have approximately 90 days to "cure" the default and "reinstate" the loan—that is, to pay all your missed payments, late fees, and other charges, keep your property and continue with your regular monthly payments on the loan. After that period, the lender can accelerate the loan.

Loan Acceleration/Notice of Sale

Once the period for curing the default has passed, you usually receive a notice of acceleration or sale. In many states, in order to accelerate the loan, the lender must

send you a notice of acceleration. When a lender accelerates a loan, the total amount of the loan becomes due, not just the back payments, and a date to sell the property is set, usually 15 to 30 days in the future.

In many states, once the loan has been accelerated, you cannot “reinstate” the loan by bringing it current, but must “redeem” it by paying off the entire balance. In some states, like California, and on loans held by Fannie Mae or Freddie Mac if no longer time is required by a state, lenders must allow borrowers to reinstate the loan up to five days before the sale, despite the acceleration. Some lenders may allow a borrower to reinstate up to the sale date, even though they are not required to do so by law.

Once your right to reinstate has passed, the only way you can keep your home is to pay off the entire outstanding loan balance. Usually, if you are in financial trouble, the only way to pay off the entire loan balance is to refinance the loan. Think carefully before doing so. You don’t want to end up with another loan you can’t afford. (See below for more information on refinancing home loans.)

Lenders usually are required to advertise the home for sale (after giving you the notice of default and other required notices). The sale must be conducted in public and usually involves an auction procedure, but don’t count on the auction bringing a market price. (See “The Sale,” below.)

In order to challenge a nonjudicial foreclosure, you must file a lawsuit asking the court to stop the sale of your house. In most cases, you will need an attorney’s assistance to do this. (See “Defenses to Foreclosure,” below.)

Judicial Foreclosures

As mentioned, the process for judicial foreclosures varies from state to state. If your state requires a lender to get a court order in order to foreclose (see “Mortgages and Deeds of Trust,” above), you will receive a summons or other notice. The notice will explain your rights, including how much time you have to respond to the attached court papers. You have the right to challenge the legality of the foreclosure in court. See “Defenses to Foreclosure,” below, and consult an attorney if you might have a reason to stop or delay foreclosure. If you don’t respond to the papers or you lose in court, the court will issue a judgment to the lender, permitting it to hold a foreclosure sale.

The Sale

Whether the foreclosure went through a court proceeding or is a nonjudicial foreclosure, before the actual sale, the lender (or trustee) is usually required to publish a notice of the sale in a newspaper in the county where your house is located. The notice includes information about the loan and the time and location of the sale; in most states, the sale must take place at least three to five weeks after the notice is published.

At the foreclosure sale, anyone with a financial interest in your house will probably attend. This includes the first, second, and even third mortgage (or deed of trust) holders and any creditor (such as the IRS or a contractor) that has placed a lien on your house. Investors who like to purchase

Beware of Foreclosure Scams

Once the foreclosure process starts, in most states it becomes public record, so you are likely to be contacted by all sorts of people and companies offering help. Some may be legitimate; most won't be. Many unscrupulous people make money by taking advantage of people facing foreclosure.

Foreclosure scams rely on your desperation, lack of information, and faith in humanity ("No one would kick me when I'm down") or shared heritage, religion, or national origin ("Someone of my culture/religion wouldn't trick me"). Here are just few of the scams.

Phantom rescue. The scammer charges excessive fees for a few phone calls or a little paperwork that the homeowner could have done and for a promise of representation that never happens. The scammer abandons you when the time period for reinstatement—which should have been used to get current on the loan, negotiate with the lender, or find effective assistance—runs out. The foreclosure then proceeds.

Bailout (also called sale/leaseback). The scammer tells you to surrender title to the house, with the promise that you can rent it and buy it back from the scammer later. You may be told that surrender of the title is necessary so that someone with better credit can get new financing to save the house. The terms of the buyback are so onerous that you can't buy the house back, and the rescuer pockets the equity. Alternatively, the scammer puts a new loan on the property, sucking all the equity out, then

returns the property, with a much higher loan and payments you cannot possibly afford.

Bait and switch. Here, you don't realize that you are surrendering title to the house in exchange for the promised rescue. The scammer may trick you into surrendering title (perhaps when signing new loan documents), or may simply forge your signature on the deed. The scammer then keeps the house, refinances it for a higher amount, or sells it and keeps the profit.

Also be wary of the following. Before agreeing to anything, read the fine print, and make sure you can truly afford the "fix."

- High-rate loans to get you out of foreclosure.
- "Easy credit," low-cost loans regardless of credit history (these often have hidden costs).
- Equity skimmers (these folks try to buy houses for a small fraction of their market value, often through misrepresentation, deceit, or intimidation).
- Foreclosure consultants (these people promise to help homeowners in foreclosure, charge high fees for little or no service, and then purchase the home at a fraction of its value).

If you need help, seek counseling through the federal Department of Housing and Urban Development program (www.hud.gov, 800-569-4287, or (TTY) 800-877-8339) or a reputable nonprofit organization such as a Consumer Credit Counseling Service (see Chapter 19).

distressed property (real estate lingo for property that's been through foreclosure) will also be present.

The lender who foreclosed makes the first bid, usually for the amount owed but often for less. It may seem like the lender is bidding to buy the house from itself. Both you and the lender have ownership interest in the house, however, and by bidding, the lender is essentially buying you out. If the house sells for more than you owe creditors who have a security interest in your house, you're entitled to the excess. But the foreclosing lender first gets to deduct the costs of foreclosing and selling, usually several thousand dollars. Don't expect to leave a foreclosure sale with money in your pocket.

Any other lender or lien holder will get worried if the foreclosing lender's bid is the only one, because that bid covers only what that lender is owed. If the sale goes through at that price, the other lenders and lien holders will get nothing from the sale. So if your property is worth more than the amount the foreclosing lender bid, another lender or lien holder may bid to protect his or her interest. So might a potential buyer who sees that the property's value exceeds the amount owed the lenders and lien holders. The house is sold to the highest bidder.

EXAMPLE: Steve's house is worth \$210,000, though he paid only \$120,000 for it ten years ago. He has now hit hard times. He owes the original lender \$74,000. A few years back, he took out a home equity loan and owes that lender \$35,000. He also owes the IRS \$43,000 in back taxes, interest, and penalties.

Thus, Steve's creditors are owed a total of \$152,000.

The foreclosing lender starts the bidding at \$74,000. The holder of the home equity loan then bids \$109,000 (the amount of the original loan plus the home equity loan). The successful bid is by an investor for \$165,000, \$45,000 less than the house is worth, but enough to pay off the \$152,000 due to Steve's creditors who have a security interest in his house. Most of the \$13,000 balance is used to cover the costs of the foreclosure sale. Because the house is worth \$210,000, the investor enjoys a tidy "profit" of \$45,000, assuming it can later sell the house at full value.

If no one bids more than the foreclosing lender at the sale, the house reverts to the lender for the amount of its bid. A one-bid foreclosure is more likely in very depressed markets. In stronger markets, however, investors or other buyers will probably bid.

In many states, if the sale was after a court proceeding for foreclosure, the successful bidder doesn't actually get title to the house for a period of time, from several days to several months, known as the redemption period. During that period, you can "redeem" the property, by paying the foreclosing lender the entire balance you owe it, plus the lender's costs.

Defenses to Foreclosure

You may be able to delay or stop the foreclosure if you have legitimate, legal

reasons for not paying the mortgage or trust deed or the lender has not properly followed state foreclosure procedures. If you think you might have a defense to foreclosure, contact a lawyer immediately. (See Chapter 19 for information on how to find a lawyer.)

Some possible defenses are:

Violations of the federal Truth in Lending law.

This law requires the lender to provide certain information about your loan before you sign the papers. If the lender failed to provide this information, you may be able to cancel the

mortgage. This right to cancel applies only to loans *not* used to purchase your home. (See Chapter 3 for more on this law.)

Home improvement fraud. If you took out a mortgage to finance improvements to your home, and the contractor ripped you off (for example, the work was shoddy or incomplete), you may be able to cancel the loan.

Interest rates or loan terms that violate state or federal law. Although some states limit how much interest can be charged on a loan, for

The Robosigning Scandal

In 2010, the media and foreclosure defense lawyers discovered that many of the big players in the mortgage industry had submitted faulty and sometimes fraudulent paperwork in thousands of foreclosure cases. Some judges had been refusing to allow foreclosure where the paperwork was not complete, causing some lenders to temporarily freeze foreclosures.

The scandal revolved around false affidavits. Typically, in a judicial foreclosure state, the lender proves the requisite facts by submitting documents and a written statement signed under oath (called an affidavit) by a person (usually a bank or loan servicer employee) who has reviewed the documents and who is supposed to have some personal basis for believing the facts to be true. Turns out, these large lenders submitted affidavits signed by “robosigners”—people who signed hundreds of affidavits each day, without reviewing the paperwork or having any knowledge as to whether the facts in the affidavit were accurate.

The scandal reached nonjudicial foreclosure states too, since some of these states also require that an affidavit be signed as part of the foreclosure process. Since the robosigning scandal erupted, defense lawyers and reporters have discovered other examples of lenders cutting corners or submitting false paperwork in foreclosure cases (such as using process services who falsely state they’ve served notices and documents on homeowners).

For some homeowners, the robosigning mess may create opportunities to challenge their foreclosures in court or negotiate with lenders to avoid foreclosure. If you suspect issues with your foreclosure paperwork, contact an attorney immediately. To learn more about the robosigning scandal and how you can challenge faulty paperwork, check out the articles in [Nolo’s Foreclosure area](#) and [Nolo’s Bankruptcy and Foreclosure Blog](#), both found on Nolo’s website at www.nolo.com.

most financial institutions, those limits are preempted by federal law, so they do not apply. Federal law prohibits lenders from making deceptive or false representations about the loan. And for certain very expensive loans, federal law requires extra disclosures and prohibits some terms, like balloon payments. (See Chapter 11 for more on these expensive loans.)

Failure to follow foreclosure procedures.

Each state requires lenders to follow specific procedures when foreclosing on a home. If the lender doesn't follow these rules (for example, by not giving proper notice of the foreclosure or failing to inform you of certain rights), you may be able to delay the foreclosure. (See "The Robosigning Scandal," above, for recent news on lenders' failure to comply with required foreclosure paperwork.)

Bankruptcy. Filing for bankruptcy automatically stops foreclosure proceedings, at least temporarily. (See Chapter 15 for more on bankruptcy.)

Watch Out for Deficiency Balances

A deficiency balance is the difference between what you owe the foreclosing lender and what the lender received at the sale. In many states, if the sale doesn't cover what you owe, the lender is entitled to a "deficiency" for the difference. The lender usually must schedule a court hearing and present evidence of the value of the property to obtain the deficiency. Some states give consumers more protection from deficiency balances. California, for example, prohibits deficiency balances on loans to purchase

your home or if the foreclosure is by a nonjudicial sale.

But if "junior" lien holders—creditors whose liens were filed after the foreclosing lender's lien was filed—don't receive full payment when that foreclosing lender forecloses, you still owe them the deficiency and they can collect it from you.

In many states, a lender with a deficiency can use the collection techniques covered in Chapter 7 and will often accept less than the full amount if you can offer a lump sum settlement. If you owe a lot of money, or there's an easy target for collection (such as a large bank account or monthly wages), the lender is likely to pass your debt to a collection agency or a lawyer (to sue you). One possible way to avoid a deficiency balance is to deed the property back to the lender in lieu of foreclosure. (This strategy is discussed later in this chapter.) If the lender agrees to accept the deed, the lender is essentially agreeing that the amount you owe equals the current value of the property, eliminating any deficiency balance. In most cases, you won't have to pay income tax on the portion of the debt eliminated if your default is on a loan secured by your primary residence and you borrowed the money to buy or improve it. See Chapter 5, "Beware of the IRS If You Settle a Debt." But the deed in lieu will be a negative mark on your credit report for seven years.

Finally, if you plan to file for bankruptcy, you probably don't need to worry about a deficiency balance, because you will probably be able to discharge it in the bankruptcy.

Changing Laws to Protect Homeowners

Laws that protect homeowners against deficiency balances and other harmful effects of foreclosure were passed during the Great Depression in some states, including California. The economic crisis beginning in 2008 is the worst since the Great Depression. Some state legislators have tried to pass laws to expand the kinds of mortgages that prohibit deficiency balances. (For example, such a bill passed the California legislature in 2010, but was vetoed by the governor.) Check with your state or federal representatives to see whether they are planning to give homeowners more foreclosure protection. See www.votesmart.org to find contact information for your local, state, and federal representatives.

Alternatives to Foreclosure

There are many options for homeowners in foreclosure, in danger of being in foreclosure, or just having trouble making monthly mortgage payments. What options might work for you depend on your individual situation. Some homeowners may be able to take advantage of recent government programs to modify loans or refinance. Some may be better off selling, doing a short sale, or getting a deed in lieu of foreclosure. Others might be able to work out a short- or long-term deal with their lender.

Whatever your situation, if you have difficulty paying your mortgage, review all of your options before taking action. In almost all situations, you'll need to communicate, and often negotiate, with your lender. Before you contact your lender, bone up on common barriers to and tips for successful negotiations with mortgage lenders.

Barriers to Negotiation

Unfortunately, there are a number of factors that have made negotiating with mortgage lenders tricky in recent years.

Dealing with loan servicers. Lenders know that high foreclosure rates can cost them lots of money. So you would expect lenders would be willing to work with you to avoid foreclosure. In fact, usually, you are not dealing directly with the lender, but the servicer, the company to which you make your mortgage payments. Your loan may have been sold, sometimes more than once. The servicer is your primary contact, but how much it can do to accommodate you may be limited by the terms of its contract with the owners of the loan.

Lenders unwilling to modify loans under government programs. Unfortunately, during this recession, despite a variety of government programs designed to induce servicers and lenders to modify loans, lenders have been surprisingly slow to work with homeowners. Why is that? The government programs depend on the good faith participation of lenders and servicers—nothing requires lenders to modify a loan. Because many homeowners are “upside

down” (owe a lot more on their mortgage than the property is worth), servicers and lenders are unwilling to take the big cuts necessary to modify the loan under the government programs offered. Also, servicers may be overwhelmed with the sheer number of borrowers in default on their home loans.

So few homeowners have been helped by their lenders through the main government program, called “HAMP,” that the Special Inspector General noted that “a program that began with much promise now must be counted among those that risk generating anger and mistrust.”

Tips for Negotiating With Lenders

While all that sounds very discouraging, in fact there are a number of strategies for dealing with mortgage payments or possible foreclosure. In fact, the public reaction to the failures of the programs intended to help homeowners and the failure of lenders to properly prepare documents for foreclosure may actually help you in your negotiations. When you encounter trouble paying your mortgage, follow these tips.

Keep a log. It is critical that you keep a log of all contacts with the mortgage lender or servicer during your negotiations or other attempts to deal with your mortgage. This log could become key if you need to challenge a lender that refused to allow you to modify your loan, or even to challenge a foreclosure.

Act quickly. Mortgage lenders and consumer credit counselors agree: When you know you’re going to fall behind on your mortgage payments, you should call the lender. The

sooner you get in contact with the lender, the more options you will have to cure the delinquency and save your house. Also, some of the government incentives for servicers are higher if they reach agreement with you before you default on your loan. So you may have more success negotiating with them while they can get more incentive pay. In addition, many of the government programs require you to act timely in order to qualify.

Communicate with your lender. Don’t stop communicating with the lender or servicer. If it realizes it may have trouble getting its documents together or if the economic situation changes, it may become more willing to consider a settlement it rejected earlier.

Know your local real estate market. The more you know about the real estate market in your neighborhood, the more you will be able to show the lender why the deal you are offering is better than foreclosure. Look around the neighborhood and notice how many homes are vacant or for sale. Contact a reputable real estate broker in your area and check online listings to see what comparable properties are selling for and how long they take to sell. For a list of good real estate websites, see Nolo’s “[Best Home Buying and Selling Research Websites](http://www.nolo.com),” at www.nolo.com.

Consider all options. Carefully consider all of your options. Depending on your financial situation, this can mean agreeing to an informal payment plan to make up missed payments, getting a short-term break on interest or payments, or refinancing or modifying your loan so you can afford the payments over the long term. It may also make sense for you to get the lender to let

you walk away if you either turn over the keys or sell the house for less than you owe. And some people might be better off letting the house go into foreclosure, and use the time during the foreclosure process to save money that would otherwise be spent on mortgage payments to accumulate a security deposit for a rental.

Short-Term Informal Payment Plans

If you want to keep your home and you've missed only a payment or two, most mortgage companies will let you make up the delinquency through a repayment plan. For example, if you missed two payments of \$1,000 each, your lender may allow you to pay the \$2,000 over six months. Other short-term fixes that your lender may agree to include deferring or waiving late charges, temporarily reducing your interest rate, or temporarily reducing or suspending payments. Remember, be careful to find out what exactly the lender wants you to accept in order to get these changes. Don't agree to something you do not understand, because it may make the situation more difficult for you later.

If you fell behind in your mortgage payments because you became unemployed for a short time, you may be able to get help from the federal Home Affordable Unemployment Program. (This program is discussed later in this chapter.)

If your financial difficulty is longer term, perhaps because your mortgage payments

increased dramatically and you can no longer afford the monthly payments, a short-term fix is not for you. Instead, you may need to consider refinancing or getting a loan modification. (These options are discussed later in this chapter.)

Federal Programs for Homeowners Facing Possible Foreclosure

The Making Home Affordable federal program offers a variety of programs that may help people who are behind, or likely to fall behind, on mortgage payments. These programs include:

- short-term assistance to unemployed homeowners through the Home Affordable Unemployment Program, called UP
- a refinancing option through Home Affordable Refinance Program, called HARP
- modification of first mortgages through the Home Affordable Modification Program, called HAMP
- a program to modify second mortgages through the Second Lien Modification Program, called 2MP, and
- financial assistance to move or sell through the Home Affordable Foreclosure Alternatives Program, called HAFA.

Some of these programs are temporary and, unless extended, end sometime in 2011 or 2012. Agencies such as the Veterans Administration, Federal Housing Administration, Fannie Mae, and Freddie

Mac have additional programs to help homeowners avoid foreclosure. Generally, you are not eligible for any of these programs if you have been convicted of fraud, theft, forgery, or money laundering within the last ten years.

Getting Help From HUD

Determining whether you qualify for any of the new government programs assisting homeowners can be tricky, and assessing which program, if any, will work for you, may be even more difficult. We have outlined the basics for each program below. But before you apply, you'll need to know about the nitty-gritty details. And keep in mind that in the upcoming months (and years) Congress may change various aspects of the programs, extend some programs, or add new programs.

One of the best ways to get competent, free assistance to learn about the programs and figure out which is best for you, is to contact a housing counselor certified by the Department of Housing and Urban Development (HUD). To get a referral to a counselor in your area, contact HUD at 800-569-4287 or 800-877-8339 (TDD), or by going to www.hud.gov.

You can also get information about each of these programs from the federal government's Making Home Affordable website, at www.makinghomeaffordable.gov.

Home Affordable Unemployment Program (UP)

Under the Unemployment Program, for a few months you pay either reduced mortgage payments (equal to less than 31% of your gross income) or none at all. This period is called a forbearance and typically lasts for three months (less if you start working again, or more if the servicer extends the period). Late payment charges are not collected during this period, but do accumulate.

To be eligible for UP:

- you must meet the same eligibility requirements as for HAMP (see below)
- you must be unemployed when you request UP and when the period of forbearance begins
- the servicer can require you to receive at least three months of unemployment benefits before it starts the forbearance period, and
- you must make the request before you become three months late with your mortgage payments.

The servicer cannot proceed with foreclosure after you request UP, while you are in any UP plan or extension of it, or while you are being evaluated for HAMP or HAFA (see below for descriptions of these programs). If your unemployment situation will be more than short term, the servicer is required to evaluate whether you qualify for one of the long-term programs, like HAMP or HAFA (both described below).

Home Affordable Refinance Program

The Home Affordable Refinance Program (HARP) is available only for homeowners whose first mortgage is owned or guaranteed by the quasi-governmental entities Fannie Mae or Freddie Mac. HARP allows borrowers who are current on their payments and have not been more than 30 days late in the last 12 months to refinance with the same or a different lender before June 2011. Doing so will result in a lower interest rate and a fixed-rate loan, even if the home has lost value. The new loan can be for up to 125% of the home's current value (normally, these lenders limit loans to 80% of the home's value).

For example, if your home is worth \$200,000, you can borrow no more than \$250,000. If you owe additional amounts on a second mortgage, you may still qualify if that lender agrees to stay in second place after the new loan.

Because mortgage interest rates fell to an all-time low beginning in late 2008, refinancing at new lower rates could reduce your monthly costs by hundreds of dollars. About half of all mortgages are owned or guaranteed by Fannie Mae or Freddie Mac. If you're not sure if one of these agencies guarantees your loan, check with the company you make your mortgage payments to, or contact:

- Fannie Mae, 800-732-6643, www.fanniemae.com/homeaffordable
- Freddie Mac, 800-FREDDIE, www.freddiemac.com/avoidforeclosure.

To learn if you qualify, check with the company where you make your mortgage

payments, or with a HUD counselor. (See "Getting Help From HUD," above, for contact information.)

If you cannot qualify to refinance your loan, Fannie Mae also has loan modification programs and programs that may let you rent your house for up to a year. For information about Fannie Mae's other programs, go to Fannie Mae's Know Your Options website at www.knowyouroptions.com.

Hope for Homeowners Program

Hope for Homeowners (H4H) is not limited to loans held by Fannie Mae or Freddie Mac. Unless Congress extends the program, it is only available for homeowners who refinance by September 30, 2011.

H4H passed in 2008, but was a big flop. Congress and the President revised the program in 2009 in an attempt to help more homeowners. If you are eligible and can convince your lender to go along, H4H can help you refinance with the lower market rates available and get rid of balloon payments or interest rates that have increased, or are set to increase under the old terms of your mortgage. It may be particularly useful for people who have both a first mortgage and a second or third as well because it knocks out the second, third, and other lower priority mortgages, but pays them 3% to 50% of their loan if they agree to let their loan be knocked out.

If you are current on your first mortgage, you can get a new loan for up to 105% of the value of your home. If you are behind on your first mortgage, your new

loan could be between 90% and 96.5% of your home's value. However, your current lender must agree to accept the new loan amount as payment in full for your existing mortgage and to waive all late payment and prepayment fees. This means that if your home's value has declined, your new loan could be quite a bit smaller than your existing one—and your monthly payments will be a lot less, too. But the catch is getting your lender to agree to the refinance—if your home value has fallen a lot, your lender may be reluctant to agree to the new, reduced loan.

To be eligible for this program, you must meet all of these requirements:

- You took out the first mortgage on your primary residence before January 1, 2008.
- It would take more than 31% of your monthly income to pay real estate taxes, insurance, and monthly payments on your current mortgage sufficient to pay it off over 30 years. If you have a balloon payment or an interest-only loan, or if your interest rate will soon reset at a higher rate, you may qualify even if your current monthly mortgage, tax, and insurance payments are not over 31%.
- You are either current on your first mortgage or have made at least six payments toward it.
- You have not defaulted on a debt of more than \$100,000 in the last five years, but you can be in bankruptcy.
- You have not been convicted of fraud in the last ten years.
- You have a net worth of less than \$1,000,000 (excluding money in qualified retirement plans).
- You don't have an ownership interest in any other residences (unless they were inherited).

Loans under the Hope for Homeowners program are at a fixed interest rate for 30 years (more for two to four units). The maximum loan amount is \$550,440.

If you refinance the new loan or sell your property, you must share some of the “initial equity,” if any, with the FHA. The amount you share decreases as time goes on. The initial equity is the equity you have in the property at the time of the H4H loan. So, if your property is worth \$200,000 and you refinance with a 90% loan of \$180,000, your initial equity is \$20,000. If you sell the property within three years, the FHA would get 80% of that equity, or \$16,000. After five years, it gets only 50% of the original equity.

To find out more about the H4H program or to start the process, ask your lender or contact a housing counselor approved by HUD. (See, “Getting Help From HUD,” above, for contact information.)

Home Affordable Modification Program

The Home Affordable Modification Program (HAMP) is intended to induce lenders and servicers to agree to give homeowners at risk of foreclosure a modified loan with more affordable payments, based on income. This program is available only for homeowners whose mortgage payments on their home (including taxes, insurance, and homeowner

association dues), are more than 31% of their gross monthly income and who have experienced a significant change in income or expenses, to the point that they can no longer afford their current mortgage payments. If you have a second mortgage, as part of the HAMP process, you can also apply for modification of your second loan under the Second Lien Modification Program (see below).

To be eligible for a Home Affordable Modification, a borrower must:

- have an unpaid principal balance that is equal to or less than \$729,750 (this amount is higher for two- to four-unit properties)
- have a loan that was originated before January 1, 2009, and
- be accepted into the program before December 31, 2012.

You do not have to be delinquent or in foreclosure on your loan, but merely at risk of imminent default, for example, because you have had or will soon have a significant increase in your mortgage payment that you cannot afford. If you owe a lot of other debt, you will be required to participate in a debt counseling program, too.

The lender must first reduce your monthly mortgage payments so that they are no more than 38% of your monthly income. The government will then match the lender's further reductions, dollar-for-dollar, until your monthly payments reach a 31% debt-to-income ratio.

The modified payments and low interest rate last for five years. After five years, the interest rate can be gradually stepped up by 1% per year, but will be capped at the

Freddie Mac Primary Mortgage Market Survey rate on the date you entered into the modification.

To reach the target affordability level of 31%, lenders will reduce interest rates to as low as 2%, and then, if necessary, extend the term or amortization period for up to 40 years, or forbear principal at no interest. Alternatively, the lender can agree to reduce the principal balance to get to the 31% ratio. As of October 2, 2010, if your first mortgage is more than 115% of your home's value, the servicer must consider reducing the principal loan balance. If you were evaluated for and rejected from HAMP before October 1, 2010, ask to be reevaluated. This new requirement might change your situation.

You are put into the modification for a three-month trial. If you can keep the payments current during that time, then the agreement is finalized.

Banks that take bailout money from the government must participate in this program. The plan also pays incentives to lenders and servicers who participate. Additional incentive payments are available to servicers that reduce your principal balance or get you into the program while you are still current on your mortgage. Bonuses are also available for second mortgage lenders who accept a payoff. Finally, if you keep your new payments current, you will receive (by way of reducing the principal on your loan) up to \$1,000 per year for five years.

One word of caution—remember that the interest rates will increase after five years. And, if the lender had to forbear (wait to collect) part of the principal until the end of the loan, you might end up with a

balloon payment. Before you sign the loan papers, make sure you know about (and can afford) the higher interest and any balloon payments.

Tips for Applying for HAMP Loans

Unfortunately, many reports suggest that banks have not been diligent in reviewing HAMP applications nor in following the program requirements. This means that you must be proactive in ensuring the bank receives and properly considers your application.

- Send your application by certified mail with return receipt, fax with confirmation, or another method acceptable to the servicer and that will provide you with proof that you sent the application (homeowners have complained that some servicers claim they never got their HAMP application).
- The lender must confirm receipt of your application within ten days, and evaluate it (or request more information) within 30 days. If you don't hear from the lender within this time frame, follow up.

The Effect of a HAMP Application on Foreclosure

Unless a sale is scheduled within seven days, the lender must freeze all foreclosure proceedings while it evaluates your HAMP application. If a sale is scheduled, get written confirmation that the sale has been postponed. Homeowners have complained that some lenders are proceeding with fore-

closure sales, even though the homeowner applied for HAMP more than seven days from the date. If you can't get confirmation, contact an attorney.

If Your HAMP Application Is Denied

If the lender turns down your HAMP application, it must notify you of the primary reasons for its decision. It cannot foreclose within 30 days of this notice. During this 30-day period, you may ask the servicer for information it used to make its decision, and it must comply within ten days of your request. Review the information carefully, and ask for a reevaluation if any of the data is inaccurate. If you pointed out inaccuracies in the information used, the servicer may not proceed with foreclosure until it reconciles the inaccuracies.

To learn more about HAMP, go to the federal government's Making Home Affordable website at www.makinghomeaffordable.gov. To get free help from a housing counselor to evaluate your income and expenses and to go over your options, contact HUD. (See "Getting Help From HUD," above, for contact information.)

Second Lien Modification Program

The Second Lien Modification Program (2MP) was added in late 2009 and revised in March 2010. It is intended to help homeowners having difficulty paying a second mortgage. Under the program, you may be able to reduce payments on, or eliminate entirely, your second mortgage if you have already

received a HAMP modification of your first mortgage. It does not apply to additional loans on your home other than a second mortgage.

Servicers are not required to participate in 2MP, but several of the largest ones do. If a servicer does participate in 2MP, it must follow particular rules. In return, it receives various incentive payments from the government. Modifications must be made by December 31, 2012, unless the program is extended.

Eligibility for 2MP

You are eligible for 2MP even if you are behind on your mortgage payments or in bankruptcy. However, you must meet these requirements:

- You can start the process while you are still working on getting a HAMP modification on your first mortgage, but you must get a HAMP modification before the second modification can be finalized.
- You must have gotten the second mortgage before January 1, 2009.
- The mortgage must be in second place on your property, after your first mortgage, unless it is after a non-mortgage second lien, like a tax lien or mechanic's lien.
- The second mortgage cannot be insured or held by the federal government. For example, it cannot be an FHA or VA loan (however these agencies have similar programs).
- You must owe at least \$5,000 on the second mortgage and your monthly payments must be over \$100. However, although not required to, servicers and lenders can voluntarily agree to consider smaller second mortgages for 2MP modifications.

If the servicer rejects your application, it must notify you within ten days, and inform you of the reasons.

Characteristics of 2MP Loans

If the lender accepts your 2MP application, the modified loan must meet certain criteria.

- The lender must waive late payment, insufficient fund, and annual fees.
- The interest rate on the loan must be 1% to 2% for five years. After that time, it can increase up to the maximum rate allowed on the first mortgage.
- The loan term must be at least as long as the first mortgage—and the first mortgage has to be at 30 years.
- If your second mortgage had a credit line, you can no longer withdraw money from that line.
- If the HAMP modification included a forbearance (delay in collecting principal) until the end of the loan, the second loan must have the same percentage of principal deferred until the end of the loan.
- Servicers may, but are not required to, forgive some or all of the principal.
- If you are behind on your second mortgage payments, or if the new payments will be higher than the old payments, the modification will become permanent only after a trial period of three months or more.

2MP Monetary Incentives

To encourage these modifications, the federal government provides incentives to you, the servicer, and the owner of your loan. Your principal debt on the second mortgage will be reduced by \$250 per year for five years if you stay current on your first and second mortgages. The government will pay \$500 to a servicer that eliminates or modifies its mortgage and additional annual payments of \$250 for three years if it reduces your payments by 6% and you stay current. Owners and servicers that eliminate your loan entirely will be paid a percentage of the loan amount.

To learn more about 2MP, go to the federal government's Making Home Affordable website at www.makinghomeaffordable.gov.



CAUTION

Don't get help from a "loan modification" center. If you need help trying to modify your loan, do not call one of the "loan modification centers" advertised on TV, radio, by flyers, or on the Internet. These centers try to sound like they are government programs, but they are not. They will likely help themselves to some of your money, and leave you in a worse position than before. Although prosecutors are trying to put these so-called loan modification companies out of business, there are still plenty of them around. For help with loan modifications, contact HUD (see "Getting Help From HUD") for a list of legitimate housing counselors approved by HUD.

Mortgage Workouts

Even if you don't qualify for any of the government loan modification programs or your lender doesn't agree to participate, you may be able to arrange a "mortgage workout." A workout is any agreement you make with the lender that changes how you pay the delinquency on your mortgage or otherwise keeps you out of foreclosure. Many lenders require this formal process even for short-term fixes.

Here are some workout options your lender might agree to:

- Spread repayment of missed payments over a few months. For example, if your monthly payment is \$1,000 and you missed two payments (\$2,000), the lender might let you pay \$1,500 for four months.
- Reduce or suspend your regular payments for a specified time, and then add a portion of your overdue amount to your regular payments later on.
- Extend the length of your loan and add the missed payments at the end.
- For a period of time, suspend the amount of your monthly payment that goes toward the principal and only require payment of interest, taxes, and insurance.
- Let you sell the property for less than you owe the lender and waive the rest. This is called a "short sale."

It's best to start the workout negotiations as early as possible. But before you contact the lender about a workout, you should prepare information about your situation, including:

- a reasonable budget for the future and an assessment of your current financial situation (review Worksheets 1 and 2 and see Chapter 17 for help in making a budget)
- a plan to deal with other essential debts, such as utility payments and a car loan if you need it for work (see Chapter 6 for ways to meet those essential debts and reduce or eliminate other bills)
- a hardship letter explaining why you fell behind on your mortgage, emphasizing the most sympathetic aspects of your situation
- information about the property and its value, and
- information about your loan and the amount of the default.

You should also find out if your mortgage is insured by the Federal Housing Administration (FHA) or the U.S. Department of Housing and Urban Development (HUD). Borrowers with these types of mortgages have some special rights that those with “conventional” mortgages don’t have.

It’s a good idea to look for a nonprofit debt counselor or lawyer who has experience with mortgage workouts to help you. (See “Getting Help From HUD,” above, to find a HUD-approved counseling agency in your area.)

Be advised that workouts are not for everyone, nor will the lender always agree to a workout. Be realistic about your situation before you approach the lender. If it is likely that you will lose your house anyway because of your dire financial situation or because you have other pressing financial

problems, it doesn’t make sense to keep paying your mortgage through a workout.

When Your Loan Is Owned by the Federal Government

Even if you don’t qualify for refinancing under the Home Affordable Refinance program (see above), if your loan is owned by Fannie Mae or Freddie Mac, you may qualify for other foreclosure prevention programs. Both Fannie and Freddie offer rate reductions, term extensions, and other changes for people in financial distress, especially for people experiencing involuntary money problems, such as an illness, death of a spouse, or job loss. One option allows homeowners to make partially reduced payments for up to 18 months.

If you can’t get help from your loan servicer, contact Fannie Mae or Freddie Mac directly at:

- Fannie Mae, 800-732-6643 (the Consumer Resource Center), www.fanniemae.com, or
- Freddie Mac, 800-373-3343, www.freddiemac.com/avoidforeclosure.

Refinancing

If you can’t afford your current mortgage payments, and you can’t qualify for any of the government’s special refinancing or modification programs or any workouts the lender may offer, but you still have equity in your home, your lender may let you

refinance the loan to reduce the amount of the monthly payments. You'll have to convince the lender that you have enough income to make the reduced payments. Typically, a lender looks at both the ratio of your total monthly housing debt burden (principal, interest, real estate taxes, and insurance) to your monthly gross income and your total monthly expenses to your monthly gross income. For example, if your housing debt ratio is 28% or less and your total debt ratio is 36% or less, you can qualify for an FHA-insured loan. If you have good credit, you may qualify for loans with even higher debt ratios, especially if the lender thinks it will be hard to resell your house at a profit if it foreclosed. Be realistic when refinancing. If you can't afford your new payments, the process is likely to hurt more than it helps.



RESOURCE

Online mortgage calculator. If you need help figuring out how much mortgage payment you can afford—and what terms you'd need to qualify—visit Nolo's website at www.nolo.com and check out the "[Which mortgage is better for me?](#)" calculator.

If you are considering refinancing your home loan, try to avoid or minimize the following:

- **Rapidly increasing interest.** For example, the interest begins at an artificially low "teaser" rate (such as 4%), so that you think you can afford the loan. The lender qualifies you for the loan based on the artificial rate, but after six months to two years, the interest automatically rises by two points or so. Every six months or year after that, the interest rate adjusts, depending on the market.
- **Points.** Real estate loans usually come with points, an amount of money equal to a percentage of your loan, which you pay to your lender simply for the privilege of borrowing money. If you refinance with the same lender from whom you originally borrowed, the lender may waive the points. Loans with very high points and other charges are subject to the requirements of a federal law called HOEPA. (See Chapter 11 for more information.)
- **Insurance and other extras.** Consumer loans, including refinanced loans, are often loaded with extra products that most consumers don't need. You should especially look out for credit insurance charges. (See Chapter 11.)
- **Prepayment penalties.** Expensive prepayment penalties almost always go hand in hand with refinancing. Even if the new loan does not contain prepayment penalties, some states allow creditors to calculate payoff figures for the old loan that are to the creditor's, not the borrower's, advantage.
- **Predatory terms.** Predatory lenders target people whom the lenders think are desperate. These offers may start out okay but often turn sour at the last minute, when you're told that because of your credit rating you will have to pay more. The lenders offer high interest rates (often with low teaser rates), large balloon payments (jumbo

payments due at the end of the loan term), and negative amortization (loans where your monthly payment does not cover the interest due that period, so you owe more at the end than when you started). Predatory lenders often target even consumers who could qualify for better loans.



CAUTION

Look out for scams. If you are in foreclosure, you will likely receive offers of help from many organizations. Some of them will be scammers. Bone up on the common types of foreclosure scams, look out for red flags, and if you need help, get it from a HUD housing counselor or legitimate consumer credit counseling agency. (To learn more, see “Beware of Foreclosure Scams,” above.)

Don’t just accept what one lender tells you is available. Shop around before you apply for a loan. Websites like www.bankrate.com can give you an idea of the available rates for the type of loan you want. Contact several lenders that seem to have good rates. If a lender tells you that you don’t qualify for the terms initially offered, ask the lender to give you a revised written statement of the terms it’s offering. Review those terms before you make any decisions.

If you’ve already applied for a loan and discover that the terms are different from what the lender offered, or you decide you don’t like the terms, in most cases you have a right to cancel the transaction within three business days after the terms are properly disclosed to you or three business days after

you sign the loan documents, whichever is later (see Chapter 3 for more information). If you planned to pay your current lender with the new loan, and discover only at the last minute, or even after you sign, that the terms were misrepresented to you, act quickly. Tell your current lender, file a complaint against the company or person who misled you, and immediately look for another lender. If you missed only a few payments before the deal went sour, you can prevent foreclosure by making up the missed payments and then obtaining a new loan. If the original lender has accelerated the loan—declared the entire balance due because you’ve missed several payments—you’ll have to refinance the entire loan to prevent foreclosure.

EXAMPLE: Jessica owes \$213,000 on her mortgage, which has monthly payments of \$1,400. She has missed four payments and received a letter from the lender stating that it has “accelerated” the mortgage as permitted under the loan agreement. All \$213,000—not merely the \$5,600 in missed payments—is due immediately. For Jessica to save her house, she will need to get a loan from a second lender to cover the full \$213,000, unless the original lender agrees to reinstate her loan.

In this situation, it may be difficult for you to get a new loan. The new lender will do a credit check and likely see a mortgage delinquency (if reported by your first lender). You’ll have to convince the new lender that you won’t default on the new loan.



RELATED TOPIC

Be aware of the three-day right to cancel. For most loans secured by your home (such as a mortgage), you can cancel the contract within three business days of signing the contract, or sometimes longer if the lender fails to provide you with the proper disclosures. See Chapter 3 for more information on when this right to cancel applies.

Selling Your House

If you don't want to keep your house, or you've come to the conclusion that you can't afford it, your best option may be to sell it. If you decide to do this, you can probably stop making mortgage payments.

Even at this late date, consumer credit counselors suggest that you contact the lender and ask for time to list the house with a real estate agent and sell it. If your payments aren't too far behind and you've kept in contact with the lender, it may agree.

If the lender chooses to foreclose, it may take anywhere from four months to a year and a half. If you're willing to take any reasonable offer, you may be able to sell your house much sooner.

Short Sales and Deeds in Lieu of Foreclosure

There are two other options to consider if you decide you cannot keep your house—a short sale and a deed in lieu of foreclosure.

Short Sales

The lender may also agree to a “short sale.” This happens when the money you get from selling your house is less than the amount you owe to your lender. In a “short sale,” the lender agrees to accept the proceeds from the sale and forgo the remainder of the loan balance. Some lenders require documentation of any financial or medical hardship you are experiencing before agreeing to a short sale. By accepting a short sale, the lender can avoid a lengthy and costly foreclosure, and you're able to pay off the loan for less than you owe. These sales are common when the real estate market is depressed.

HAFA Short Sale Program

The Home Affordable Foreclosure Alternatives Program (HAFA) provides a \$1,500 incentive for loan servicers to agree to short sales, and up to \$2,000 for the mortgage owner to use to help get rid of subordinate loans (second or third mortgages, for example). Like HAMP, this program is only temporary. You must have an agreement with the servicer for a short sale by December 31, 2012.

If you have a second, third, or other loan on your home, that subordinate lender will probably not agree to a short sale and forgo a deficiency balance unless it receives some of the sale proceeds from the servicer on the first mortgage. To encourage these deals to work, the federal government will reimburse the servicer up to \$2,000 if the servicer shares the sale proceeds with the

other lenders. The servicer must share on a 1 to 3 basis—for each \$1 paid to the servicer, the servicer must share \$3 of sale proceeds with the subordinate mortgage holders. A subordinate mortgage holder cannot be paid more than 6% of its mortgage.

This means that for HAFA to work, you must convince the first mortgage holder to share some of the sale proceeds with the subordinate mortgage holder, and convince the subordinate mortgage holder to accept that money to release its claims against you and the property. This is very important. If you cannot give the first mortgage holder clear title (meaning there are no subordinate liens on your home), the short sale will not be approved under HAFA. In addition, if there is mortgage insurance on the property, the insurance company must agree not to try to collect anything from you because of the short sale.

If your home is worth less than what you owe on the first mortgage (which is the case for many people in today's economy), convincing the lower mortgage holders to cooperate may be easier. This is because the second mortgage holder is likely to receive nothing in a foreclosure or bankruptcy, so it may be more willing to accept cash to give up its mortgage.

In order to qualify for a HAFA short sale,

- your unpaid principal balance must be equal to or less than \$729,750 (this amount is higher for two- to four-unit properties)
- your loan must have been originated before January 1, 2009
- your mortgage is delinquent or default is likely, and
- you have mortgage payments that take up more than 31% of your gross income.

A servicer must consider every potentially eligible borrower for a HAFA short sale if it rejects you for a HAMP trial modification or after you fall out of a HAMP modification. It must also consider you for its own loan modification programs before it offers you a HAFA alternative. But you can request HAFA consideration at any time, even if you are in bankruptcy.

If you act timely in dealing with the short sale, the servicer cannot hold a foreclosure sale (but can start or continue foreclosure proceedings). If you miss deadlines or don't respond to the servicer within specified time periods (which will be outlined in the letters you receive), you'll lose the opportunity to be considered for a HAFA short sale, and the servicer will be able to proceed with the foreclosure sale. One deadline to keep in mind: Once you receive a letter from the servicer offering a possible short sale, you must respond within 14 days.

Here's how a HAFA short sale works: The servicer sends you a proposed short-sale agreement with the sale terms it will accept. The servicer cannot charge you any up-front costs to evaluate the property for a short sale, but can tack them on to the end of the loan if the sale doesn't go through. The agreement must allow you a minimum of 120 days to sell the property, but the servicer can extend this time for up to 12 months. The servicer may require you to make payments until the sale occurs, but those cannot be more than 31% of your gross monthly income. If you get an

acceptable offer that meets the criteria in your short sale agreement, the servicer must agree to the sale (or specify how it fails to meet the agreement if it rejects the offer). The servicer must accept the sale amount as payment in full. It cannot try to get you to sign a promissory note, pay it some cash, or pursue a deficiency judgment against you. Borrowers are eligible for a payment of \$3,000 in relocation expenses, which is deducted from the gross sales price when the sale closes.

Because the servicer is forgiving part of your debt, you may have negative tax consequences unless you qualify for an exception. (See Chapter 5, “Beware of the IRS If You Settle a Debt.”)

Deed in Lieu of Foreclosure

If you don’t get any offers for your house or the lender won’t approve a short sale, your other option is to walk away from your house. To do this, you transfer your ownership interest in your home to the lender—called a deed in lieu of foreclosure, or “deed in lieu,” for short. Lenders don’t have to accept your deed in lieu, but many will. Keep in mind that ordinarily you won’t get any cash back, even if you have lots of equity in your home. And it may have negative tax consequences, unless you qualify for an exception. (See “Beware of the IRS If You Settle a Debt” in Chapter 5.) The deed in lieu will appear on your credit report as a negative mark for several years.

If you opt for a deed in lieu, try to get concessions from the lender—after all, you are saving it the expense and hassle of

foreclosing on your home. For example, ask the lender to eliminate negative references on your credit report or give you more time to stay in the house.

HABA Deed in Lieu of Foreclosure Program

HABA provides the same incentives for deeds in lieu as it does for short sales—a \$1,500 incentive payment for loan servicers to agree to a deed in lieu, up to \$2,000 for the mortgage owner to use to extinguish subordinate loans (second or third mortgages, for example), and \$3,000 in relocation expenses for you.

As with a short sale, the servicer cannot require you to pay cash or sign a promissory note, and it cannot pursue a deficiency judgment against you, if it agrees to a HABA deed-in-lieu.

The eligibility criteria are similar to those for a HABA short sale, as are the requirements for the servicer to consider you for a HABA deed-in-lieu, your time to respond (14 days), and the prohibitions on the servicer requiring you to pay any of the costs up front. The servicer may require you to first try to sell the property through a HABA short sale.

In order to get a HABA deed-in-lieu, the second (or other subordinate mortgage holders) must give up their mortgages. As with the short sale, the government provides an incentive for the second to give up its mortgage, but you will likely need to negotiate with the first and second to get an agreement as to how much of the incentive the servicer on the first will pay to

the second for an agreement to remove its mortgage and eliminate your debt. If there is mortgage insurance, you will also need an agreement from the insurance company not to attempt to collect from you if the deed-in-lieu is accepted.



CAUTION

A short sale, principal reduction, foreclosure, or deed-in-lieu could increase your tax bill. Any time a lender writes off \$600 or more of the principal you owe, the lender must report it to the IRS on a Form 1099-C or 1099-A, a report of miscellaneous income. The theory is that you're receiving a gift of this amount, because you don't have to repay it. But in most cases, you won't have to pay income tax on the amount if your default is on a loan secured by your primary residence and you borrowed the money to buy or improve it. See Chapter 5, "Beware of the IRS If You Settle a Debt."

Other Programs to Help Homeowners

The number and kind of federal programs to help homeowners in trouble on their

home loans has been changing constantly as programs are tweaked or new programs added. Also, because some of the federal stimulus money went directly to the states hardest hit by the recession, some states may have or develop additional programs to help homeowners.

The bottom line: There may be other programs available. Talk with a HUD housing counselor and your loan servicer to find out about other existing programs that might help. Ask your state or local representatives for information about state programs.



RESOURCE

Detailed information on foreclosure.

The Foreclosure Survival Guide, by Stephen Elias (Nolo), explains foreclosure from start to finish, includes 50-state laws, and suggests many strategies for keeping your house, or at the least lessening the financial blow of losing it. It discusses short sales, deeds in lieu of foreclosure, workouts, and how to get help from nonprofit housing counselors approved by the federal department of Housing and Urban Development.

Dealing With Debt Collectors

Creditor or Collection Agency?	150
Negotiating Secured Debts	152
Before Your Debt Is Sent to a Collection Agency	152
When Your Debt Is Sent to a Collection Agency	154
What to Expect	154
How Collection Agencies Find You	155
Collection Efforts Must Stop While You Verify Debt	158
Asking the Creditor to Take Back the Debt	159
How to Get a Debt Collector to Leave You Alone	159
How to Handle Time-Barred or “Zombie” Debts	160
Negotiating Unsecured Debts	161
Can a Lawyer Help You Negotiate?	165
When Collection Turns Into a Lawsuit	165
Illegal Debt Collection Practices	166
Federal Law	167
State or Local Laws Prohibiting Unfair Debt Collections	169
How to Fight Back If a Collection Agency Violates the Law	169
Using Right to Verification Violations as a Bargaining Chip	171
Bringing a Lawsuit	171
Gathering Proof	172

“The most trifling actions that affect a man’s credit are to be regarded. The sound of your hammer at five in the morning, or nine at night, heard by a creditor, makes him easier six months longer; but if he sees you at a billiard table, or hears your voice at a tavern when you should be at work, he sends for his money the next day.”

—Benjamin Franklin, American statesman,
philosopher, and inventor, 1706–1790

Not many years ago, bill collectors regularly threatened, scared, lied to, harassed, intimidated, and otherwise abused debtors. Debtors were falsely told they’d go to jail for not paying their bills; friends and relatives were often interrogated and threatened with financial and bodily harm if they didn’t tell where absent debtors were living; and bill collectors published lists of people who didn’t pay their debts. Abusive collection practices, including harassment, are now illegal—although an unfortunate number of collectors still resort to them.

When dealing with a bill collector, it’s crucial to adopt a plan and stick with it. One choice—if you have no money, plan to file for bankruptcy, or choose not to pay right now—is to refuse to talk with the collector. As explained below, you can request that a debt collector from a collection agency stop contacting you. However, many debt counselors believe that whether you negotiate directly with the collector or obtain a lawyer’s assistance, the best strategy almost always is to engage the collector, unless you’re judgment proof or truly plan to file for

bankruptcy. Don’t just ignore the debt or try to hide from the collector. Usually, the longer you put off resolving the issue, the worse the situation and consequences will become.

If you really need more time to pay, another option is to contact the bill collector to negotiate a payment schedule. If you do contact a bill collector, realize that as nice as a bill collector may appear, he or she is not your friend and does not have your best interest at heart. The collector wants your money. To get it, he or she may ask you about your personal problems or may claim to be interested in saving you from ruining your credit. Don’t believe it: The collector doesn’t really care about your problems or your credit rating. The collector’s only goal is to get your money. Stick to your plan. If you want extra time to pay or to lower your payments, insist on it.



SKIP AHEAD

If you have already been sued.

If the creditor or a collection agency has sued you and won, the collection options are different. See Chapter 14 for more information.

Creditor or Collection Agency?

To understand your rights when dealing with a bill collector, you must keep in mind the difference between the creditor and a debt collector. This distinction is important, primarily because the federal law regulating collection agencies generally doesn’t apply to original creditors, unless they take steps to act like third-party collectors.

Creditor. A creditor is a business or person who first extended you credit or loaned you money (the original creditor) or another company your debt was transferred to. The term does not include a company that has obtained debts after they are in default, solely to collect the defaulted debts for the creditor. Sometimes original creditors are called credit grantors.



RELATED TOPIC

If the creditor, not a debt collection agency, is collecting your debt, read Chapter 5. Chapter 5 discusses how to negotiate your debts when you are dealing directly with the creditor.

Collection agency. A debt collector, also referred to as a collection agency or third-party collector, is someone who regularly collects debts for others, or whose main business is collecting debts for others. Under federal law (the Fair Debt Collection Practices Act, or FDCPA, 15 U.S.C. §§ 1692 and following), a debt collector also includes:

- a creditor that collects its debts under a different name or by sending letters signed by lawyers
- a lawyer who regularly collects debts owed to others (see *Heintz v. Jenkins*, 115 S.Ct. 1489 (1995)), and
- any company that purchases defaulted debts for the purpose of collecting them.

As mentioned above, creditors generally are not governed by the FDCPA. Several states, however, have debt collection laws that apply to both creditors and collection agencies. Also, many states have laws

regulating collection agencies more strictly than the FDCPA. (See “State or Local Laws Prohibiting Unfair Debt Collections,” later in this chapter.)

Efforts to collect past-due unsecured bills usually follow a standard pattern. Original creditors first try to collect their own debts. When you initially owe money, you’ll receive a series of letters or phone calls from the original creditor’s collections or customer service department. Although most creditors make first contact a few weeks after you miss a payment, some more aggressive companies begin hard-core collection efforts within 24 to 36 hours after your payment is due, even before a late payment charge would apply. If you don’t respond to the letters or calls within a few months or your efforts to negotiate with the creditor for an option you can afford do not succeed, most original creditors will hire a collection agency, sell your debt to a collection agency, or write it off as a bad debt.



CAUTION

Written-off debts could increase your tax bill. If a creditor writes off a debt, it means that for tax or other accounting reasons, the company no longer lists the debt as one it expects to collect in full. Although collection efforts by the creditor may end, collection by a debt collection agency may begin. Even though collection continues, some creditors will report to the IRS that the debt is not collectible. If the creditor sends you a 1099-C form, you may have to report the amount written off as income and pay tax on it. However, if you get a 1099-C but the creditor has not provided you with a written statement that it

or a collection agency will no longer try to collect the debt, talk with a tax advisor. You may not have to report the amount listed on the 1099-C as income. See Chapter 5 for more information.

Some original creditors, concerned about their reputations, hire collection agencies known for less aggressive tactics. They realize that you may be a customer again in the future, and they don't want to alienate you. Some creditors, however, couldn't care less about what you think of them. They are fed up with you for not paying and will find the most aggressive collection agency around.



TIP

General negotiating tips in Chapter 5.

The information in Chapter 5 on how to negotiate with creditors is also useful when dealing with debt collection agencies. So be sure to read the “Tips on Negotiating” and other information related to your particular type of debt in Chapter 5. Then turn back to this chapter to learn about the additional steps you can take to negotiate with debt collectors, and how to protect yourself from overreaching or abusive debt collection.

Negotiating Secured Debts

This chapter deals mainly with collection efforts on unsecured debts. Why? Secured creditors rarely hound you to pay back debts. They don't have to. As long as they comply with state or federal laws that require them to notify you that you are behind on

your payments and then follow the proper repossession procedures, they can simply come and take the property (collateral) that secures the debt. See Chapter 5 for information on how to negotiate secured debts and Chapter 7 for information on repossession of personal property.

Before Your Debt Is Sent to a Collection Agency

Do not let collection letters or phone calls from a creditor or a debt collector undo your plan for handling (or not paying) a debt. Here is what you can expect as your creditor first attempts to collect, before transferring the debt to a debt collector.

Creditors usually begin their collection efforts with a collection (“dunning”) letter. At first, it will probably send a polite “past due” form letter. If you don't respond, subsequent letters will get firmer.

Some creditors will also suspend your credit at some point; the only way to get it back is to send a payment.

The last letter will likely contain a threat: “If we do not receive payment within ten days, your credit privileges will be canceled (if they haven't already been), your account sent to a collection agency, and your delinquency reported to the national credit reporting agencies. You could face a lawsuit, wage attachment, or lien on your property.”

Creditors hate it when collection efforts reach this stage. They want you to pay your bill, but they also want to be nice so that you'll remain a customer. If the creditor's letter-writing campaign fails or the person

Form Letters From an Attorney

If you get what appears to be a form collection letter with a lawyer's mechanically reproduced signature at the bottom (and perhaps letterhead at the top), the sender of the letter (not necessarily the lawyer) and the lawyer may be violating the FDCPA—and you may have grounds to sue.

Under the FDCPA, lawyers must be involved in each individual collection case before their names appear on any collection letters. They can't authorize a form letter and then let the bill collector mail out letters bearing their signature without reviewing each particular debtor's file. (See *Avila v. Rubin*, 84 F.3d 222 (7th Cir. 1996); *Clomon v. Jackson*, 988 F.2d 1314 (2d Cir. 1993); *Nielsen v. Dickerson*, 307 F.3d 623 (7th Cir. 2002).)

If you suspect this is happening, call the law firm on the letterhead and ask to speak with the attorney. If the attorney doesn't exist or has no recollection of you or your debt, send a letter to the collections manager, president, and CEO of the original creditor. Point out the blatant violation of the FDCPA and your right to sue.

If you get no satisfaction from them and you feel litigious, you may want to find an experienced consumer lawyer who will file a lawsuit for you against the collection lawyer and the collection agency. If you win a lawsuit based on the FDCPA, the defendant may have to pay your attorneys' fees, as well as your damages. Some consumer lawyers will file this lawsuit for you in exchange for the attorneys' fees or a percentage of the money you might win, without asking you to pay fees up front. (This is called a contingency arrangement.) One place to find a consumer lawyer is the National Association of Consumer Advocates website, www.naca.net.

You can also file complaints about the collection lawyer with the Federal Trade Commission (www.ftc.gov) and with the state bar or other lawyer discipline agency. Attorneys who let someone else use their name to practice law violate both the FDCPA and the attorney code of ethics.

assigned to your account prefers direct contact, you'll probably receive a phone call.

When the first overdue notice arrives, your first response may be to throw it away. And if the letter is from a creditor whose debt you marked as "low priority" (see Chapter 4 and Worksheet 2), not responding may be your best alternative. But don't throw it away. It may turn out to be evidence if you need to sue for violations of the debt collection laws.



CAUTION

Don't write a letter or make a payment if the statute of limitations has run out. If your debt is so old that the creditor or collection agency is barred by law from collecting it—three to six years from your last payment, in many states—then you shouldn't say anything in a letter or on the phone that acknowledges the debt, or even make a small payment on it. If you admit that you owe the money now or ever owed

it in the past, or even if you make a payment on it, this could turn your debt into a brand new debt, which gives the creditor or agency another three to six years to collect. Collection agencies often try to keep you on the phone until you say something that “revives” the statute of limitations. Don’t fall for it—the best practice is simply not to talk to collection agencies about very old debts. See “How to Handle Time-Barred or ‘Zombie’ Debts,” below, for more information. If you are not sure if the statute of limitations has run, consult an attorney before you act on debts you haven’t paid on for a long time.

When Your Debt Is Sent to a Collection Agency

If you ignore the creditor’s letters and phone calls, you are unable to work out an agreement to repay or settle the debt, or you set up a repayment schedule but fail to make the payments, your bill will most likely be turned over to a collection agency or sold to a debt buyer, and your delinquency reported to a credit bureau. This will probably take place within three to six months after you default. The types of debts most likely to be sent to a collection agency are credit card and telephone service debts, followed by other utilities, car, government, and medical debts.



TIP

If a debt collector contacts you by telephone, call back. If a debt collector first contacts you by phone, ask for the collector’s name, telephone number, address, and the particulars of

the debt. Write down the information and arrange a time when you can call back. That way, you will have a record of each person with whom you have contact. This information might be important if you later discover that the company has violated the Fair Debt Collection Practices Act or if you sue the collection agency or it sues you. This will also allow you to talk to the debt collector when you are prepared, rather than when the debt collector catches you by surprise.

What to Expect

By taking some time to understand how collection agencies operate, you’ll know how to respond when they contact you so that you can negotiate a payment plan or get the agency off your back. So keep these basic points in mind.

Debts may be assigned or sold. The creditor may continue to own the debt, but turn it over to a debt collection agency with a contract to collect. Or, the creditor may sell the debt outright to a collection agency.

Collection agencies with assigned debts take their cues from the creditor. If the debt is assigned to a collection agency, but still owned by the creditor, generally, the collection agency can’t sue you without the original creditor’s authorization. If the original creditor insists that the agency collect 100% of the debt, the agency cannot accept less from you without getting the original creditor’s okay.

Agencies move quickly. You can expect to hear from a collection agency as soon as the original creditor passes on your debt. Professional debt collectors know that the

earlier they strike, the higher their chance of collecting.

Bill collecting is a serious—and lucrative—business. Collection agents get paid for results. Some earn high salaries. Other companies pay their collectors meager wages plus commissions, which means you may be called by a stressed-out, rude collector who doesn't much care what the law allows.

Agencies with assigned debts usually keep between 25% and 60% of what they collect. The older the account, the higher the agency's fee. Sometimes, the agency charges per letter it writes or phone call it places—usually about 50¢ per letter or \$1 per call. That gives it an incentive to contact you repeatedly.

Collection agencies are choosy. Before an agency tries to collect, it evaluates its likelihood of success. It may carry thousands—or even tens of thousands—of delinquent accounts and must prioritize which ones to go after. If success looks likely, the agency will move full speed ahead. If the chances of finding you are low, the odds of collecting money from you are somewhere between slim and nil. If your credit file shows that you've defaulted on 20 other accounts, the agency may give your debt low priority.

Collection agencies that purchase debt may not have good information. Buying debts has become a huge business for collection agencies. Especially if your debt is old, you are likely to find yourself dealing with someone who has bought a bundle of debts for pennies on the dollar. Because the collector may not have any of the original credit documents and only a computer printout of the debt, the information it has may very well be incorrect. It may even

have bought the debt from a previous debt collector, not the original creditor, which increases the likelihood that the collector doesn't have accurate (or any) information about the debt.

How Collection Agencies Find You

Just because a collection agency calls or writes to you, don't assume that it knows where you live, especially if you've moved since you transacted business with the original creditor. All the bill collector knows is that it mailed a letter or left a phone message that wasn't returned.

Here are the primary resources a collection agency uses to find people.

Information on your credit application.

The original creditor provides the collection agency with the information on your credit application. If you've moved, someone listed on the application (employer, bank, credit references, or nearest living relative) may know where you are.

Relatives, friends, employers, and neighbors.

Collection agents often call relatives, friends, employers, or neighbors, posing as a friend or relative. However, federal law limits these types of calls. See "Illegal Debt Collection Practices," below.

Phone books. Phone directories, printed or online, are good sources of names, addresses, and phone numbers. If a collection agency has your phone number, it may be able to find your address using a reverse directory. A reverse directory lists telephone numbers in numeric order, rather than by name.

Post office. The agency may check the post office for a forwarding address. Also,

major credit bureaus with their own collection agencies receive change-of-address information for each month from the U.S. Postal Service.

Some privacy rights advocates suggest that to prevent collectors from using your change of address information to find your current address, you choose the “temporary” address change when you fill out a change of address request. That will forward mail for six months, and you can extend it for up to a year, but it won’t show up as a permanent change of address in postal records. Alternatively, you can simply notify each person or business you want to know your new address, but not fill out a postal change of address form. Of course, you run the risk that you will forget a business or person you do want to keep in contact with, or whose bills you want to pay on time. You could wind up falling behind on a priority account because you don’t get the bills.

State motor vehicle department. In most states, a legitimate creditor or its agent (the collection agency) can use the motor vehicle department’s database to verify your address in order to collect a debt and pursue its legal remedies against you.

Voter registration records. Some collection agents check voter registration records in the county of your last residence. If you’ve reregistered in the same county, the registrar will have your new address. If you’ve moved out of county and reregistered, your new county would have forwarded cancellation information to your old county, and the registrar may make that information available.

Utility companies. Although this process is difficult, an agency collector may be able to find you through the electric or phone company, especially if you are still in the same service area. Even if you move farther, the company may have your new address as a place to send your final bill.

Banks. If you move but leave your old bank account open—even if you don’t still do business with the bank—the bank will probably have your new address and may provide it to a collection agency.

Credit bureaus. If a collection agency is associated with a credit bureau (see Chapter 17), the collection agency will have access to all kinds of information, such as your address, phone number, employer, and credit history. Even if it isn’t part of a credit bureau, for a small fee the collector can place your name on a credit bureau locate list. If you apply for credit—even if you’ve moved hundreds or thousands of miles from where you previously lived—your name could be forwarded to the collection agency.

Data aggregators. Data aggregators gather and sell information on millions of people from public records, surveys, purchase data, and demographic data. Much of this information is now available online. You may want to try to opt out of these online lists. The Privacy Rights Clearinghouse has a lengthy list of online data sellers that allow opting out. You can get more information at www.privacyrights.org/ar/infobrokers.htm.

Internet searches. You can find anything from aircraft owners to high school classmates online. Even clubs, churches, and PTAs put their newsletters online now,

so your affiliations could show up in an Internet search. Then the organization might innocently help the collection agency find you.

Skip tracers. Creditors and collectors use skip tracers to locate people. Skip tracers locate people using traditional and high-tech techniques, such as telephone books, email address finders, Social Security number searches, telephone company call records, public records, domain name lookups, military and Selective Service lookups, prison inmate lookups, professional license lookups, apartment locators, hotel/motel locators, business and corporate records, hunting and fishing licenses, and even eBay seller searches.

Pretexters. Pretexters get people's personal information illegally, using false pretenses. A pretexter might call you and say he's from a survey firm. He might ask you some questions to elicit basic personal information. When the pretexter has enough information, he calls your financial institution and pretends to be you or someone who is authorized to access your account. He gets more personal information from the bank.



TIP

Never disclose where you work or bank. If you are asked, simply say “no comment”—this isn't the time to worry about being polite. If the collection agency or original creditor later sues you and gets a judgment, knowing where you bank or work will make it easy to collect the judgment. If you do make a payment, don't send a check from your bank—get a money order or cashier's check from a different bank or the post office.

If You're the Cosigner of a Loan

When you cosign for a loan, you assume full responsibility for paying back the loan if the primary borrower defaults. In almost every state, the creditor can go after a cosigner without first trying to collect from the primary borrower. But most creditors try to collect first from the primary borrower. So, if you've been contacted by a collection agency, you can assume that the primary debtor defaulted.

Your best bet is to pay the debt if you can (and save your credit rating) and then try to collect from the primary debtor. For more information on cosigned debts, see Chapter 11.

Government Records Are Off Limits

Social Security, unemployment, disability, census, and other government records are not public documents, so bill collectors are not supposed to be able to get them. But as some well-publicized instances have shown, thieves search for Social Security numbers on the Internet and sell them. And companies are sometimes careless with their customers' Social Security numbers, making them vulnerable to being discovered.

Collection Efforts Must Stop While You Verify Debt

One of the most powerful tools you have under the federal Fair Debt Collection Practices Act is to require that a debt collector verify the amount and validity of the debt. In order to do this, however, you must act quickly once you are contacted by the debt collector. Normally, the collection agency's first letter gives you the following information (if it doesn't, by law it has five days from the initial contact to tell you):

- the amount of the debt
- the name of the creditor to whom the debt is currently owed
- that you have 30 days to dispute the validity of the debt
- if you don't dispute the debt's validity, the collector will assume it is valid
- if you do dispute the debt's validity within the 30 days, the agency will send you verification of it, and
- if you send a written request within 30 days for the name and address of the original creditor, the agency will provide it, if different from the current creditor.

The debt collector may immediately take steps to try to collect the debt, but if you send a written request for verification of the name and address of the original creditor (or dispute the debt), the collection agency must stop its collection efforts and cannot resume them before double-checking the debt information with the original creditor and mailing you the verification, including the original creditor's name and address. If

the debt collector is an attorney, the attorney must stop all collection efforts, but can take legal action, such as filing or continuing a lawsuit. If you receive notice of a lawsuit, make sure your response is timely—the deadline may be different than the 30-day deadline to request verification of the debt. (See Chapter 14.)

Checking into who the original creditor is may help you decide whether you have grounds to dispute the debt. Collection agencies and original creditors are busy. While verification may seem as if it should take only a simple phone call, it may take several weeks or longer.

Requesting verification is particularly helpful if the debt has been sold. As already discussed, often debt buyers have little information about the debts they own. They may try to collect the wrong amount or from people with similar names who don't owe the debt. If the debt collector cannot verify the debt, you may be able to reduce or even eliminate the debt.

If you don't dispute the validity of the debt (or part of it) or don't request the original creditor's name and address within 30 days of receiving the first collection letter, the agency can assume the debt is valid and continue collection efforts during the 30 days and after. The debt collector has a right to use all legal collection efforts against you. (See Chapter 14 for more on lawsuits seeking payment for questionable debts.)

To request verification, send a letter like the one below to get more information about the debt.

Sample Letter to Collection Agency Requesting Verification of Debt

JB Collections, Inc.

245 Broadway

Salinas, CA 97245

Re: Verification Request on Account No. 27543

Dear JB Collections:

I received a letter from you about a debt for \$250 owed to JB Collections, Inc. I dispute the validity of this debt. Please provide documentation verifying the debt. Please also send me the name and address of the original creditor.

Sincerely,

Joe Brown

Joe Brown

Asking the Creditor to Take Back the Debt

If you are ready to negotiate on a debt, you will probably be better off talking to the creditor, not a collection agency. This is because the creditor has more discretion and flexibility in negotiating with you, and sees you as a former and possibly future customer. So ask the collector from the collection agency for the phone number of the collections department of the original creditor. Then call the creditor and ask if you can negotiate on the debt.

Ideally, the creditor will immediately negotiate with you, and you'll work something out. Unfortunately, that's rare. It's more likely that they agree to take the debt back if you negotiate with the collection agency,

establish a repayment plan, and make two or three payments under the plan. The creditor may eventually give you a new line of credit, helping you rebuild your credit.

Any agreement you reach with the creditor should be put in writing—preferably, in a letter from the creditor to you, although a letter from you to the creditor confirming the agreement and asking the creditor to correct any errors is better than nothing. Send a copy of the letter to the collector. The danger in working with the creditor rather than the collector is that the collector may have bought the debt, and may refuse to give you credit for payments made directly to the creditor. Be sure to include in any written agreement with the creditor that it acknowledges that it (not the collection agency) owns the debt. Also you may want to ask to have the negative credit information on the debt removed from your credit file, or shown as payment in full, if you make the payments under the new agreement.

How to Get a Debt Collector to Leave You Alone

Another powerful weapon against a collection agency is your right to demand to be left alone, whether you owe the debt or not. In writing, simply tell the collection agency to cease all communications with you. It must do this, except to tell you either of the following:

- Collection efforts against you have ended.
- The collection agency or the original creditor may invoke a specific remedy against you, such as suing you.

Furthermore, if the collection agency does contact you to tell you that it intends to pursue a specific remedy, the agency must truly intend to do so. It cannot simply write to you four times saying, “We’re going to sue you.”

Below is a sample letter you can use to get a collection agency off your back. Although it is not required, you might also want to tell the collector why you are in financial trouble. Be brief. If you are judgment proof,

Sample Letter to Collection Agency to Tell It to Cease Contacting You

Attn: Marc Mist

Sasnak Collection Service

49 Pirate Place

Topeka, Kansas 69000

November 11, 20xx

Re: Lee Anne Ito

Account No. 88-90-92

Dear Mr. Mist:

For the past three months, I have received several phone calls and letters from you concerning an overdue Rich’s Department Store account.

This is my formal notice to you under 15 U.S.C. § 1692c to cease all further communications with me except for the reasons specifically set forth in the federal law.

This letter is not in any way an acknowledgment that I owe this money.

Very truly yours,

Lee Anne Ito

Lee Anne Ito

which means you don’t have anything that the agency can legally take from you (see Chapter 16 for more on this), you should let the collector know that. If the collection agency knows it can’t get anything from you, it is less likely to sue.

While this powerful weapon is available to you, it is not always the best approach. If you don’t negotiate with the collector, you run the risk that the collector will file a lawsuit that ultimately may require you to pay more than the amount of the original claim, and much more than a negotiated settlement. Plus, the judgment will stay on your credit record for seven years and will lower your credit score. Whether you negotiate directly with the collector or obtain a lawyer’s assistance, many counselors feel the best strategy almost always is to engage the collector.

How to Handle Time-Barred or “Zombie” Debts

A creditor or collector has a limited number of years to sue you if you fail to pay a debt. This time period is set by a law called the statute of limitations, and varies by state. (See Chapter 14 for more information.) In most states, the statute of limitations on debts is between three and six years, but can be longer or shorter, depending on the state and the type of debt.

If a debt collector tries to collect a time-barred debt from you, the most important thing is not to say or do anything that in any way acknowledges that you owe the debt. Acknowledging the debt or making even a token payment can restart the statute of limitations in some states.

If you're absolutely certain that the statute of limitations has expired on the debt, you can tell the collector to stop contacting you, and the collector must abide by your wishes. The only downside is that the debt will appear on your credit report until the seven-year reporting period ends, which may hinder your efforts to get a mortgage or car loan.

Why is someone coming after you for such an old debt, anyway? Aggressive debt collectors buy these debts from creditors for pennies on the dollar, so they make a tidy profit when they collect anything. Each year, debt buyers buy billions of dollars worth of charged-off consumer debt. And the amount of such purchases for zombie debts is reportedly on the rise. It's legal to try to collect (after all, you still owe the debt), the collector is prevented only from using the courts to try to collect it. The collector can seek voluntary payment of the debt, but most courts have held that suing you or threatening to sue you is a violation of the FDCPA, *unless* the statute of limitations has started anew. A collector cannot legally try to collect a debt that you discharged in bankruptcy. But that doesn't mean that debt collectors won't sue you anyway. (For more information on what to do if the collector sues, see Chapter 14.)

According to media reports, debt buyers have been known to harass debtors, reage accounts on debtors' credit reports, and try to trick debtors into reaffirming debts so that the statute of limitations begins anew.

Particularly watch out when you are offered new credit. One way debt collectors try to trick you into reaffirming an old debt is to offer you a credit card. You may not realize that by signing up for the credit

card you are reaffirming a debt by turning it into a new debt on your new credit card, which otherwise is so old the debt collector would be unlikely to ever be able to collect it. Often the credit card turns out to have a very low credit limit, so it is not useful as a credit card, anyway. Tax refund anticipation loan applications often include provisions by which you are supposedly agreeing to collection of stale debts.

The collector should not be able to reage your account so that the debt appears on your credit report for more than seven and one half years from when the debt was written off as uncollectible or turned over to collection. The federal Fair Credit Reporting Act sets strict rules for the reporting of delinquencies and the start of the seven-year reporting period. At least in theory, the creditor should have reported that date, and the collector should not be able to change it. (See Chapter 17 to learn about disputing inaccurate information in your credit report.)

Negotiating Unsecured Debts

Most debts that go to collection agencies are unsecured debts, such as credit card, telephone, utility, and medical debt. If the creditor is flexible, it may be happy to accept a settlement below the full amount to avoid spending months futilely trying to collect the whole thing. As you negotiate, remember two key points:

- **The collection agency didn't lend you the money or extend you credit initially.** It doesn't care if you owe \$250 or \$2,500. It just wants to maximize its return, which may be a percentage of what it

collects, or whatever it can collect over the pennies on the dollar it paid for the debt.

- **Time is money.** Every time the collection agency writes or calls you, it spends money. The agency has a strong interest in getting you to pay as much as you can as fast as possible. It has less interest in collecting 100% over five years.

Before you negotiate with a collection agency, review your debt priorities. (See Chapter 4 and Worksheet 2 in Appendix D.) If you don't have the cash to make a realistic lump sum offer or to propose a payment plan, don't even talk to the collector—you may make promises you can't keep or give the agency more information than it already has. Or, worse, you may say something that turns an old time-barred debt into a brand-new debt.

Offer a Lump Sum Settlement

If you decide to offer a lump sum, understand that no general rule applies to all collection agencies. Some want 75%–80% of what you owe. Others will take 50%. Those that have given up on you may settle for one-third or less. Before you make an offer, however, decide your top amount and stick to it. Once the collector sees you will pay something, it will try to talk you into paying more. Don't agree to pay more than you can afford.

A collection agency will have more incentive to settle with you if you can pay all at once. If you owe \$500 and offer \$300 on the spot to settle the matter, the agency can

take its fee, pay the balance to the original creditor (who treats the amount you don't pay as a business loss), and close its books. If the collector owns the debt, it keeps the money, which usually ends up being a profit.



RELATED TOPIC

Thinking of mentioning bankruptcy?

If you are considering mentioning bankruptcy when you negotiate, first review “Tips on Negotiating” in Chapter 5 for information on using this strategy.

Negotiate Improvement to Your Credit Report

After your debt has been transferred or sold to a debt collector it will probably appear twice in your credit history. According to the credit reporting agency Experian, this is how it works: The debt starts as a current, never late account. As you get behind on the payments, it is typically reported as being 30, 60, 90, and then 120 days late. At that point the creditor is likely to charge off the debt. Its status will be changed to “charged off” and “sold to collections.” “Charged off” and “sold to collections” are both considered a final status. Although the account is no longer active, it stays on your credit report.

When the debt is sold or transferred to a debt collector, a new collection account is added to your credit history. It appears as an active account, showing that the debt collector bought the debt from the original creditor. If the debt is sold again to another collection agency, the status of the first collection account is changed to show that it was sold or transferred. Once again, the final

status shows that the first collection account is no longer active, but that status continues to appear as part of the account's history. All of the accounts—the original account and any subsequent collection accounts—will ordinarily be deleted at the same time, which is seven years from the original delinquency. (See Chapter 17.)

However, because creditors are not *required* to report information to a credit reporting agency, when you negotiate a debt settlement, ask to have any negative information about the debt removed from your credit files. The collection agency may tell you that this is not its decision—that only the original creditor can remove the information. Ask for the name and phone number of the person with the original creditor who has authority to make this decision.

Call that person and plead. Explain that you are taking steps to repay your debts, clean up your credit, and be more responsible. Emphasize that a clean credit report will help you achieve your goals. Be honest, but paint the bleakest possible picture of your finances. Explain illnesses and accidents, job layoffs, car repossessions, major back taxes that you owe, and the like.

If the collection agency agrees to settle for less than you owe, be sure it also agrees to report the debt it holds as “satisfied in full” to the credit bureaus. Be sure to get written confirmation from the creditor and the collector. The debt collector's confirmation should say that it will acknowledge the debt as paid in full when you pay the agreed amount. If the creditor (or the debt collector if it has the authority) agrees to delete the

original account line, get confirmation that it will submit a Universal Data Form to the three major credit bureaus deleting the account/trade line. If the debt collector does not have authority to act for the original creditor to delete the account information on the original debt, you may need to write separate letters to the creditor and the debt collector. You can use the sample letter below as a model when writing your letter.



TIP

Offer less if you're contacted by a second agency. If you're contacted by more than one collection agency for the same debt, it means the creditor has hired a secondary collection agency or that the first debt collector sold the debt to another debt collector. The creditor and at least one collection agency have given up on you. A collection agency that agrees to take your debt at this time will either insist on a generous fee (usually 50% to 60% of what's recovered) and substantial freedom in negotiating with you or have paid very little for the debt. At this point, you can probably settle the bill for 30¢ to 50¢ on the dollar or less. If the agency hasn't been able to reach you by phone but knows that you are receiving its letters, it may settle for even less.

Offer to Make Payments

If you offer to pay the debt in monthly installments, the agency has little incentive to compromise for less than the full amount. It still must chase you for payment, and it knows from experience that many people stop paying after a month or two.

Sample Letter to Creditor or Debt Collector to Make Lump Sum Payment If Negative Information Removed From Credit Report

[In your letter, check all the boxes that apply.]

[Date]

Attn: Customer Service

Name(s) on account _____

Account Number: _____

To Whom It May Concern:

I am now in a position to resolve this matter. I can pay a lump sum amount of \$_____.

If I make a lump sum payment of \$_____ by _____, 20xx, you will agree to do the following:

- ☐ [if the amount of the debt is not disputed.] You will release all claims against me and anyone else arising from this account.
- ☐ [if the amount of the debt is disputed.] I dispute the amount of the debt. You will acknowledge that the balance owed on the account is \$ [the amount of the lump sum payment], you will release all claims against me and anyone else arising from this account, and accept that payment as payment in full.
- ☐ [If you want the negative credit information about the original debt removed from your credit report.] You have authority to act for [name of original creditor], and you will submit a Universal Data Form to Experian, Equifax, and TransUnion deleting the account/trade line for the original debt.
- ☐ [If you want the debt collector to report the debt transferred or sold to it as paid in full.] You have authority to act for [name of debt collector], and you will report the debt to Experian, Equifax, and TransUnion as paid in full when I have paid the amount of [the lump sum amount you agreed to pay].

If my offer is acceptable to you, please sign the acceptance below, and return this letter to me in the enclosed envelope.

Sincerely,

I agree to the terms and conditions in this letter.

Signature

Date

Before a collection agency considers accepting monthly installments, it may have you fill out asset, income, and expense statements. Two points to keep in mind:

- You could be giving the collection agency more information about you than it previously had, and that might not be to your advantage.
- Don't lie. You may be signing these forms under penalty of perjury. It's unlikely that you would ever be prosecuted for lying on the forms, but if the creditor later sues over the debt, lies on the forms can only hurt your case.



TIP

Beware of "urgency-payment"

suggestions. If your bill is seriously past due (90 days or more) and you've just agreed to send a bill collector some money, don't be surprised if the creditor urges you to:

- Send the check by express or overnight mail.
- Wire the money, using Western Union or American Express.
- Put the payment on a credit or charge card. (If you're having debt problems, the last thing you need to do is incur more debt.)
- Have a bank wire the money.
- Visit the creditor directly and bring the payment.
- Let the collector come to your home to pick up the check.

Resist all urgency suggestions. Many will cost you money (using express or overnight mail or wiring the money) or time (visiting the collector in person) or are unnecessary incursions into your private life (the collector visiting you in person).

Remember, if you reach an agreement with the collector, get a written confirmation.

Can a Lawyer Help You Negotiate?

If you're thinking of hiring a lawyer, remember that while a lawyer can carry clout, is probably experienced at negotiating, and can convincingly mention bankruptcy, a lawyer costs money. Don't hire one unless you owe a lot and the lawyer has a realistic chance of negotiating a favorable settlement, such as getting a debt reduced to \$5,000 from \$10,000. After all, if the amount you pay the collection agency and the lawyer totals what you originally owed, you should have just paid the full amount to the collection agency. Also, make sure the lawyer quotes you the fee and doesn't charge more, or you could have one more creditor at your door. If you dispute a debt and either the seller or the debt collector may have violated the law, you may be able to find an attorney who will take your case on contingency. See Chapter 19 for tips on hiring an attorney.

When Collection Turns Into a Lawsuit

Often, a creditor or debt collector will consider the following before filing a lawsuit:

- **The chances of winning.** Most debt collection lawsuits are filed only if winning is a sure thing. It's not worth it to the creditor to pay a lawyer if the chances of winning are small.
- **The chances of collecting.** If you are judgment proof and likely to stay that way (see Chapter 7), the creditor may not bother suing you.

- **The lawyer's fees.** The older or more difficult your debt will be to collect, the larger the lawyer's fee is likely to be. The creditor doesn't want to have to pay a lot to collect.
- **Any recent Chapter 7 bankruptcy discharge.** You can't file more than once every eight years. If you filed recently, you won't be able to discharge the debt in another Chapter 7 bankruptcy and are a good lawsuit target.
- **The relationship of the lawyer and the creditor.** Sometimes, a lawyer will take small debts along with several large ones to stay in good standing with the creditor.

These traditional bases for determining whether to sue no longer govern the conduct of numerous unscrupulous creditors and debt collectors, however. They use “robosigners,” employees who prepare affidavits to file in court swearing to their familiarity with your credit account, even though they have never seen the file. Even though signing a false statement is illegal, the practice is reportedly widespread. Debt collectors using these improper methods, and lawyers who assist them, can file hundreds, or even thousands of lawsuits at very little expense. But it only works well if debtors don't answer the lawsuits. However, since the vast majority of consumers who are sued for nonpayment of a debt don't respond to the lawsuit or show up in court, many debt collectors routinely file lawsuits, perhaps in distant courts, knowing that chances are good they can get a default judgment. So, don't be surprised if collection efforts quickly turn into a lawsuit.



CAUTION

Don't ignore a lawsuit. If you ignore any lawsuit, the creditor or debt collector will quickly get a judgment against you and possibly garnish up to 25% of your wages each pay period. If you're not working, you risk having your bank accounts emptied and a lien recorded against your real estate. Keep in mind that many lawsuits by collectors are not backed by solid evidence of the debt, its amount, or even whether you really owe it. This means that your chances of winning the lawsuit may be better than you think. This isn't the time to bury your head in the sand. Find out how to fight back in Chapter 14.

Illegal Debt Collection Practices

Both state and federal law restrict collection agencies' collection tactics. Not only can you use your knowledge of these laws to protect yourself from harassment, but if a collector violates one of these laws, you may be able to: use the violation to negotiate a better settlement, file a complaint with the Federal Trade Commission (FTC), or sue the collector. The FTC and a number of consumers have successfully sued debt collection agencies in recent years. For example, in 2010, the FTC settled a lawsuit against one of the nation's largest debt collectors for \$1.75 million—it allegedly made repeated telephone calls to collect from the wrong person, to collect the wrong amount, or both, even after consumers told the company they did not owe the debt. To file a complaint with the FTC, call 877-382-4357 or go to www.ftccomplaintassistant.gov.

Federal Law

Federal law requires that a collection agency make certain disclosures and prohibits the collector from engaging in many kinds of abusive or deceptive behavior. (Fair Debt Collections Practices Act (FDCPA), 15 U.S.C. §§ 1692 to 1692p.) Here are some collection actions prohibited by the FDCPA.

Communications with third parties. For the most part, a collection agency cannot contact third parties about your debt. There are a few exceptions to this general rule. Collectors are allowed to contact:

- your attorney. If the collector knows you are represented by an attorney, it must talk only to the attorney, not you, unless you give it permission to contact you or your attorney doesn't respond to the agency's communications.
- a credit reporting agency, and
- the original creditor.

Collectors are also allowed to contact your spouse, your parents (only if you are a minor), and your codebtors. But they cannot make these contacts if you have sent a letter asking them to stop contacting you.

There is one other exception. Debt collectors are allowed to contact third parties for the limited purpose of finding information about your whereabouts. In these contacts, collectors:

- must state their name and that they are confirming location information about you
- cannot identify their employer unless asked
- cannot state that you owe a debt

- cannot contact a third party more than once unless required to do so by the third party, or unless they believe the third party's earlier response was wrong or incomplete and that the third party has correct or complete information
- cannot communicate by postcard
- cannot use any words or symbols on the outside of an envelope that indicate they are trying to collect a debt (including a business logo or letterhead) if either would give away the purpose of the letter, and
- cannot call third parties for location information once they know an attorney represents you.

Communications with you. A debt collector's first communication with you must tell you that he or she is attempting to collect a debt and that any information obtained from you will be used for that purpose. In subsequent communications, the collector must tell you his or her and the collection agency's name.

A collector cannot contact you:

- at an unusual or inconvenient time or place—calls before 8 a.m. and after 9 p.m. are presumed to be inconvenient (but, if you work nights and sleep during the day, a call at 1 p.m. may also be inconvenient)
- directly, if it knows or should have known that you have an attorney, or
- at work if it knows that your employer prohibits you from receiving collections calls at work. (If you are contacted at work and you are not allowed to have personal calls at work, tell the collector that your boss prohibits such calls.)

Harassment or abuse. In general, a collection agency cannot engage in conduct meant to harass, oppress, or abuse. Specifically, it cannot:

- use or threaten to use violence
- harm or threaten to harm you, another person, or your or another person's reputation or property
- use obscene, profane, or abusive language
- publish your name as a person who doesn't pay bills (child support collection agencies are exempt from this in some states—see Chapter 13)
- list your debt for sale to the public
- call you repeatedly, or
- place telephone calls to you without identifying the caller as a bill collector.

You never have to put up with harassment. Just hang up the phone, or put the receiver down (without hanging up) and walk away.

False or misleading representations. A collection agency can't lie. For example, it can't:

- claim to be a law enforcement agency or suggest that it is connected with the federal, state, or local government (a collector making this kind of claim is probably lying, unless it's trying to collect unpaid child support, or it's a private check diversion program under contract with a district attorney)
- falsely represent the amount you owe or the amount of compensation the collection agency will receive
- claim to be an attorney or that a communication is from an attorney

- claim that you'll be imprisoned or your property will be seized, unless the collection agency or original creditor intends to take action that could result in your going to jail or your property being taken (you can go to jail only for extremely limited reasons—see Chapter 7)
- threaten to take action that isn't intended or can't be taken—for example, if a letter from a collection agency states that it is a "final notice," it cannot write you again demanding payment
- falsely claim you've committed a crime
- threaten to sell a debt to a third party, and claim that, as a result, you will lose defenses to payment you had against the creditor (such as a breach of warranty)
- communicate false credit information, such as failing to state that you dispute a debt
- send you a document that looks like it's from a court or attorney or part of a legal process if it is not
- use a false business name, or
- claim to be employed by a credit bureau, unless the collection agency and the credit bureau are the same company.

Unfair practices. A collection agency cannot engage in any unfair or outrageous method to collect a debt. For example, it can't:

- add interest, fees, or charges not authorized in the original agreement or by state law

- accept a check postdated by more than five days unless it notifies you between three and ten days in advance of when it will deposit the check
- deposit a postdated check prior to the date on the check
- solicit a postdated check for the purpose of then threatening you with criminal prosecution
- cause you to incur communications charges, such as collect call fees, by concealing the true purpose of the communication
- threaten to seize or repossess your property if it has no right to do so or no intention of doing so
- communicate with you by postcard, or
- put any words or symbols on the outside of an envelope sent to you that indicate it's trying to collect a debt.

State or Local Laws Prohibiting Unfair Debt Collections

You may have other protections from unfair debt collection practices as well, under state law. The most valuable state laws prohibit unethical and abusive collection practices by collection agencies and creditors. (Remember, the federal law applies only to collection agencies.) To learn whether your state offers additional protections, begin by going to your state government home page ([www.\[state abbreviation\].gov](http://www.[state abbreviation].gov), as in www.ca.gov), and look for a link to a consumer protection page. Chances are you'll find articles, FAQs, and booklets having to do with consumer rights and collection agencies and creditors.

In addition, you may find that the collector has charged you too much interest. If your contract doesn't set forth an interest rate, most states impose a limit on the rate that debt collectors can charge. Check your state law to see what that limit is and compare it to the rate charged by the collector. (To find your state's interest rate limit, see "Interest Rate a Collection Agency Can Charge Before Getting a Judgment," below.) Once the collector gets a judgment against you, however, a different interest rate limit set by the state may apply.

How to Fight Back If a Collection Agency Violates the Law

If a collection agency violates the law, you may be able to:

- Sue the agency in small claims or regular court for at least \$1,000.
- Bring up the violation if the agency sues you over the debt.
- Complain to the original creditor, which may be concerned about its own liability and offer to cancel or reduce the debt.
- Complain to the Federal Trade Commission and the state agency that regulates collection agencies in your state (this won't necessarily help you, but the agencies may sanction the company).

See Chapter 3 for additional ways to assert your rights if the law was violated. See below for a sample letter to write to the creditor if you think the collection agency has violated the law.

Sample Letter to Creditor About Debt Collector's Improper Collection Tactics

April 19, 20xx

Stonecutter Furniture Factory
4500 Wilson Boulevard
Bloomington, IN 47400

Dear Stonecutter:

On May 10, 20xx, I purchased a bedroom set from you for \$2,000 (\$500 down and the rest at \$100 per month). I paid \$900 and then lost my job, became ill, and was unable to pay you.

In early 20xx, I was contacted by R. Greene at the Drone Collection Agency. R. Greene called me twice a day for nearly three weeks and used profanity at me, my husband, and my 11-year-old son. In addition, he called my father and threatened him with a lawsuit, even though he is a 76-year-old diabetic with a heart condition and has had no connection with this transaction.

I am fully prepared to take the steps necessary to protect my family and me from further harassment. I am also filing a complaint with the Federal Trade Commission and the Indiana State Attorney General, and I am considering seeing an attorney. I am writing you in the hope that you have not condoned Drone's practices and will instruct Drone to stop harassing and abusing my family and me. I also would appreciate any other assistance or consideration you may be able to provide.

Very truly yours,

Karen Wood

Karen Wood
57 Curtis Street
Bloomington, IN 47400

cc: Indiana State Attorney General, Consumer Protection
Collection Agency
Federal Trade Commission

Using Right to Verification Violations as a Bargaining Chip

If the debt collector's initial notice to you doesn't comply with its obligations under the law, you can use the violation as a bargaining chip in negotiations, or you can sue the collector and ask for damages and attorneys' fees.

One such violation often occurs with the verification notice. (See "Collection Efforts Must Stop While You Verify Debt," above, for information about the verification notice requirement.) Debt collectors know they may continue to try to collect the debt during the 30 days you have to contest the debt, unless you ask for verification. Although collection agencies usually provide the required notice about verification, they often violate the FDCPA by overshadowing this notice with other statements, so as to discourage consumers from asking for verification.

For example, often, the first letter describes itself as an effort to collect a debt, and tells you that you have 30 days to dispute the debt's validity. Then the letter demands payment, usually immediately, or threatens that if payment is not received immediately, the debt will be reported as delinquent to credit bureaus, and you may be sued. Many courts have held that this kind of statement effectively overshadows or contradicts a debtor's right to dispute the debt for 30 days and therefore violates the FDCPA. (See, for example, *Swanson v. Southern Oregon Credit Services, Inc.*, 869 F.2d 1222 (9th Cir. 1988); *Owens v. Helmuth & Johnson, PLLC*, 550 F.Supp.2d 1060 (D. Minn. 2008).) In such a situation, you are entitled to damages

from the agency if you sue and win. Many cases settle, with the debt erased or greatly reduced in exchange for the debtor dropping the FDCPA violation claim.

What if the collector sues you, and the first communication you receive is a formal pleading in a civil action? In this circumstance, the collector isn't required to provide any of the validation information described above, and the lawsuit can proceed during the 30-day period.

Bringing a Lawsuit

Under the FDCPA, you're entitled to compensation for any actual losses, including pain and suffering, that you suffer as a result of a collection agency's illegal tactics. And, depending on the circumstances you can recover up to \$1,000 additional damages. If you win, you can also ask the judge to order that the other side pay your attorney's fees and court costs.

To win, you'll need to show repeated abusive behavior. If a collector calls five times in one day and then never again, you'll probably lose in court. You may also be able to collect punitive damages under other laws, including your state's laws if the collector's conduct was particularly horrible.

In truly outrageous cases, consider hiring a lawyer to represent you in regular court. Some private lawyers specialize in debt collection abuse cases. You may be able to find one through the National Association of Consumer Advocates' website, www.naca.net.

Think about this strategy if the mental abuse inflicted on you is substantial and

you have reports from therapists and doctors documenting your suffering. In 1995, a Texas jury awarded \$11 million (this amount was later reduced by an appellate court) to a woman and her spouse against both a collection agency and a creditor after the collection agency called the woman repeatedly at home and work and made death threats and bomb threats. The debtor, fearing for her and her husband's safety, moved out of town. (*Driscoll v. Allied Adjustment Bureau*, Docket #92-7267 (El Paso, Texas, 1995).)

In addition to bringing a lawsuit against a collector, you can also raise FDCPA violations in a collection lawsuit brought against you by a creditor or collection agency. These are called “counterclaims.” See Chapter 14 for more on counterclaims.

Gathering Proof

Whatever route you decide to go, you'll need proof of the violation. Written threats are the best, but collectors usually know better than to threaten you in writing. One effective way to collect evidence is to keep a log of all calls you get from the agency. Write down the agent's name, date and time of call, and any information you remember about what the collection agent told you.

In some states, you can tape the conversation without the collector's knowledge. In others, it's a crime to tape without

consent. Only tape without consent if you are sure it's legal. To find out whether it's legal in your state, you'll have to do some legal research on your own. (See Chapter 19.) If it's not legal to tape without consent in your state (or you aren't sure), first tell the collector that you plan to tape-record the call or try to have a witness present during your conversations. If the collector knows you are recording the call, that may stop the abusive conduct. If you're loud enough about the abuse you suffered—and you've got proof backing you up—you have a chance to get the whole debt canceled in exchange for agreeing not to file a lawsuit.

Suppose the collector is foolish enough to leave a message with illegal content (profanity, for example) on your answering machine. The recording probably can be used as evidence, provided you can identify that the call came from the collector (perhaps because you recognize the voice, you call the number for the agency in response to the call and confirm the call was from the agency, or there is something in the message that identifies the caller).

Collectors also have trickier ways to collect that may not violate the law, such as by calling to say you have won a prize as a way to find out personal information about you, offering a credit card that obligates you to pay on a stale debt, or including your agreement to pay a stale debt in a refund anticipation loan.

Collection Agency Tactics

Here are some of the more atrocious acts collection agencies have committed:

- sending debtors fake legal papers and then pretending to be sheriffs. They tell debtors to pay immediately or threaten that the debtors will lose their personal possessions
- using vulgarity and profanity to threaten debtors
- harassing a debtor's parents—in particular, impersonating a government prosecutor and requesting that the parent ask the debtor to contact the collector
- soliciting a postdated check, depositing it early, and threatening the debtor with prosecution for writing a bad check
- suggesting that a debtor take up prostitution to increase income
- threatening to report Hispanic and Asian debtors to immigration agencies and posing as immigration officers, and
- engaging in repeated violations of the law—such as verbal harassment, late night calls, and calls to neighbors and friends—especially at the end of each month when collectors are trying to reach their monthly collection quotas.

Interest Rate a Collection Agency Can Charge Before Getting a Judgment

Here are interest rates set by state law for situations where the contract or agreement does not set an interest rate. If a contract does set an interest rate, the collection agency must charge that rate, even if it is different from the state rate. Usually, the contract rate will allow the creditor to charge a higher interest rate than the floor set by state law.

State	Code Section	Rate
Alabama	Ala. Code. § 8-8-1	6%
Alaska	Alaska Stat. § 45.45.010	10.50%
Arizona	Ariz. Rev. Stat. Ann. § 44-1201(A)	10%
Arkansas	Ark. Const. Art. 19, § 13(d)(i)	6%
California	Calif. Civ. Code § 3289(b)	10%
Colorado	Colo. Rev. Stat. § 5-12-101	8%
Connecticut	Conn. Gen. Stat. Ann. § 37-1	8%
Delaware	Del. Code Ann. tit. 6, § 2301(a)	5% above the Federal Reserve discount window rate at the time interest is due (www.federalreserve.gov/releases/h15)
District of Columbia	D.C. Code Ann. § 28-3302	6%
Florida	Fla. Stat. Ann. §§ 687.01, 55.03	5% above average Federal Reserve Bank of N.Y. discount window rate for preceding year
Georgia	Ga. Code Ann. §§ 7-4-2, 7-4-18	7%
Hawaii	Haw. Rev. Stat. § 478-2	10%
Idaho	Idaho Code § 28-22-104(1)	12%
Illinois	815 Ill. Comp. Stat. §§ 205/1, 2	5%
Indiana	Ind. Code Ann. § 24-4.6-1-102	8%
Iowa	Iowa Code § 535.2	5%
Kansas	Kan. Stat. Ann. § 16-201	10%
Kentucky	Ky. Rev. Stat. Ann. § 360.010	8%
Louisiana	La. Rev. Stat. 9:3500	12% maximum; must be in writing

Interest Rate a Collection Agency Can Charge Before Getting a Judgment (cont'd)

State	Code Section	Rate
Maine	Me. Rev. Stat. Ann. tit. 9A, §2-401(7)	\$5 on loans up to \$75; \$15 on loans over \$75 and under \$250; and \$25 on loans of \$250 or more
Maryland	Md. Const. Art. 3, § 57; Md. Code Ann. [Com. Law.] § 12-102	6%
Massachusetts	Mass. Gen. Laws ch. 107, § 3	6%
Michigan	Mich. Comp. Laws § 438.31	5%
Minnesota	Minn. Stat. Ann. § 334.01(Subd. 1)	6%
Mississippi	Miss. Code Ann. § 75-17-1(1)	8%
Missouri	Mo. Rev. Stat. § 408.020	9%
Montana	Mont. Code Ann. § 31-1-106	10%
Nebraska	Neb. Rev. Stat. § 45-102	6%
Nevada	Nev. Rev. Stat. Ann § 99.040	2% above the prime rate at Nevada's largest bank on January 1 or July 1 (posted at www.fid.state.nv.us ; click on "Prime Interest Rate")
New Hampshire	N.H. Rev. Stat. Ann. § 336:1(l)	10%
New Jersey	N.J. Stat. Ann. § 31:1-1(a)	6%
New Mexico	N.M. Stat. Ann. § 56-8-3	15%
New York	N.Y. Gen. Oblig. Law § 5-501(1)	6%
North Carolina	N.C. Gen. Stat. § 24-1	8%
North Dakota	N.D. Cent. Code § 47-14-05	6%
Ohio	Ohio Rev. Code Ann. §§ 1343.03(A), 5703.47	Federal short-term rate to nearest whole percent plus 3% (calculated each October, effective for one year based on July federal rate)
Oklahoma	Okla. Const. Art. 14, § 2; Okla. Stat. Ann. tit. 15, § 266	6%
Oregon	Or. Rev. Stat. § 82.010(1)	9%
Pennsylvania	41 Pa. Cons. Stat. Ann. § 202	6%

Interest Rate a Collection Agency Can Charge Before Getting a Judgment (cont'd)

State	Code Section	Rate
Rhode Island	R.I. Gen. Laws § 6-26-1	12%
South Carolina	S.C. Code Ann. § 34-31-20(A)	8.75%
South Dakota	S.D. Codified Laws Ann. §§ 54-3-4, 54-3-16(3)	12%
Tennessee	Tenn. Code Ann. § 47-14-103(3)	10%
Texas	Tex. Fin. Code Ann. § 302.002	6%
Utah	Utah Code Ann. § 15-1-1	10%
Vermont	Vt. Stat. Ann. tit. 9, § 41a(a)	12%
Virginia	Va. Code Ann. § 6.2-301	6%
Washington	Wash. Rev. Code Ann. § 19.52.010(1)	12%
West Virginia	W.Va. Code Ann. § 47-6-5(a)	6%
Wisconsin	Wis. Stat. Ann. § 138.04	5%
Wyoming	Wyo. Stat. § 40-14-106(e)	7%

Choosing and Managing Credit Cards

The Credit CARD Act.....	179
Payment Due Dates: New Rules on Timing and Grace Periods.....	180
Prohibitions on Interest Rate Increases.....	180
Other Changes to Terms and Fees That Require a 45-Day Notice.....	182
Explanations Required for Increased Interest Rates.....	184
Term Changes That Don't Require Notice	184
Credit Card Traps.....	186
Avoid Over-Limit Fees	186
New Limits on Penalty Fees.....	187
Multiple Interest Rates.....	187
High Cash Advance Interest Rates and Fees	188
Introductory "Teaser" Interest Rate Offers	189
Balance Computation Methods.....	189
Balance Transfer Gimmicks	190
High-Default Interest Rates	191
Avoid Deferred Interest Deals.....	191
Annual and Other Fees.....	192
No Grace Period	192
Trouble Paying Your Bill.....	192
Using Credit Cards Wisely.....	193
Credit Card Disclosure Forms.....	193
Get Rid of Unnecessary Credit Cards.....	195
How to Close a Credit Card Account.....	196
Shop Around When Choosing a New Card.....	197
Cards You Didn't Request	198
Rejected and Blocked Cards	199
Blocked Credit or Debit Cards	199
Rejected Credit Cards.....	200
Liability If Your Credit Card Is Lost or Stolen	200

Unauthorized Use of Your Card by an Acquaintance.....	202
To Dispute a Credit Card Bill.....	203
Resolving Disputed Charges With the Credit Card Billing Error Process.....	203
Resolving Disputed Charges With the Credit Card Claim or Defense Process.....	205
Debit Cards	208
Prepaid Debit Cards.....	210

*“Getting along with women,
Knocking around with men,
Having more credit than money,
Thus one goes through the world.”*

—Johann Wolfgang von Goethe,
German poet and dramatist,
1749–1832

By now you understand that paying your unsecured credit card bills is usually a low priority if you are struggling to save your home or car or have other higher-priority bills. Even so, there are some things you can do to avoid increased credit card bills while you dig yourself out of your financial troubles, to choose which card(s) to keep or get, to successfully get rid of cards that have onerous terms, and to dispute credit charges you should not have to pay. This chapter explains how. (See Chapter 5 for the basics on how to negotiate on a delinquent credit card bill.)



RELATED TOPIC

Stay out of debt by not using credit cards. Most consumer experts and credit counselors agree that it’s easier to get and stay out of debt if you don’t use credit cards, or at least not for daily purchases. See Chapter 17 for tips on responsible credit card use.

The Credit CARD Act

In recent years, and for good reason, the credit card industry has been heavily criticized for its abusive credit practices. In

December 2008, the Federal Reserve Board (FRB) and other federal agencies came up with some new rules to limit some unfair and deceptive practices, but delayed the effective date until 2010. In January 2009, the president signed a law with even stronger protections for credit card users, referred to as the “CARD Act” or the “Credit Card Act.” Most of the new, stronger rules protecting consumers from credit card abuses became effective in February 2010. Some additional rules became effective in August 2010.

Although the new law eliminates many of the old credit card traps, it doesn’t get rid of all of them. So, you will still have to be on the alert to avoid or get rid of cards that contain costly, unfair, or deceptive provisions.

Some of the new provisions are clearly helpful to consumers. Others help consumers, but have exceptions that could trip you up. And some credit card traps are still out there, because the new law and regulations did not stop them. Knowing about your new rights, as well as the traps that remain, should help you determine which card to keep and which to either close or not use much. Also you will be able apply this information to structure your negotiations with credit card companies. (See Chapter 5.)

In this section, we’ll review some of the new rules in the CARD Act. In the next sections, we’ll highlight some of the more common credit card “traps,” including how the CARD Act might help or not help.



TIP

Interest rates, APRs, and finance charges. Keep in mind that interest rates are often

referred to as “annual percentage rates” or “APRs.” And the dollar amount you are charged each month for interest is called the “finance charge.”



CAUTION

The CARD Act rules do not apply to all credit cards. The new credit card rules apply only to credit cards for personal and family use, not credit cards used for business. So, don't be enticed to get a “professional” or “business” credit card, thinking it provides extra benefits. Consumer credit cards provide the best protections from high charges and “gotcha” changes. Before July 21, 2011, the new credit card rules cover transactions of up to \$25,000; after that date the rules cover transactions up to \$50,000. The rules generally do not apply to credit cards secured by real property, and they do not apply to debit cards.

Payment Due Dates: New Rules on Timing and Grace Periods

Giving a very short time period in which to pay after you received a bill, shortening the grace period before finance charges applied, and switching the due date from month to month made it difficult to plan and easy to miss a payment due date. With some companies, paying by mail or phone increased inconvenience and cost you additional fees.

Things have changed under the CARD Act:

- The due date must be at least 21 days after the bill is sent, and on the same day of each month. If the due date falls on a Sunday or holiday, a payment sent by mail is not due until the next business day. So mark the date on your calendar for each month of the year and give yourself plenty of time to send payment before the due date.
- If the card has a grace period, the monthly billing statement must be sent at least 21 days before the grace period ends.
- The company must credit your payment on the date received (unless crediting it later would not increase the finance charge).
- The cutoff time for receiving a payment must ordinarily be five p.m. or by close of business if you make a payment in person.
- The credit card company cannot charge you for using a particular payment method, except for expedited service that its customer service representative provides.

If the credit card company charges you late payment fees even though your payment was within these limits, complain. (See “Where to Complain About Credit Card Abuses,” below.)

Prohibitions on Interest Rate Increases

In the past, credit card companies could change terms—like the interest rate, fee amounts, or the minimum payment—with little or no notice. They could apply new higher interest rates even to your outstanding balance. If you did not like the change and canceled the card, the company could demand you pay the entire outstanding balance immediately.

The CARD Act prohibits some of these practices. Credit card companies cannot

increase the interest rate during the first year after you open the account or on outstanding balances (with a few exceptions, below). After the first year, it can generally increase the rate on new transactions if it gives you 45 days' notice. But it can't require you to pay off the outstanding balance (on which the old, lower interest rate still applies) all at once. Instead, the card company has only three options for requiring you to pay the outstanding balance at the old rate. It can require you to (1) pay it off under the original terms, (2) pay up to double the minimum payment, or (3) comply with a payment schedule that provides for payment over five years.

Exceptions to Prohibition on Raising Interest Rate on Outstanding Balances

There are a few exceptions which allow credit card companies to increase interest rates or fees on outstanding balances as well as on new transactions:

- **Variable rate cards.** If the card has a variable rate (as many do), that is based on an index the creditor does not control, the annual percentage rate can change when the index does. The new rate can apply to outstanding debt and new transactions, even during the first year.
- **After a promotional rate.** The credit card company can charge a higher rate after a temporary "teaser" rate expires, but the teaser rate must last at least six months. The credit card issuer must tell you from the start what the interest rate will be after the temporary rate ends.
- **After a workout or temporary hardship arrangement.** Sometimes consumers negotiate temporary arrangements (often called workouts) to help catch up on payments, such as reduced minimum payments, lower interest rates, or elimination of annual fees. The company can resume the old credit card terms (those that were in force before the workout) after the workout ends or if you do not complete the workout, without providing 45 days' notice. The resumed terms can apply during the first year and also to your outstanding balance. However, in order to do this, the company must have told you that this would happen before you agreed to the workout.
- **If your payment is more than 60 days late.** If your payment is more than 60 days late, the credit card company can raise the annual percentage rate, the annual fee, the minimum finance charge, or required insurance coverage on your outstanding balance, as well as on future transactions (if they still allow

If the new rate is higher than the rate you had before the company gave you the temporary teaser rate, the new rate cannot apply to debt you still owe on transactions from before the teaser rate period. The new rate can apply to debt you still owe for transactions during the six-month teaser rate period and to new purchases. If the company gives you a six-month promotional rate when you first get the card, this exception lets it raise the rate after six months instead of having to wait for a full year.

you to use the card). But the company must first give you 45 days' notice of the change. The company must also explain that, after your rate increases, if you make the first payment on time, and five more payments on time, it must reduce the rate increase applied to the outstanding balance to the rate you had before your late payment.

When Will You Start Paying the Higher Interest Rate?

If you get a 45-day notice that your interest rate on future transactions will increase, when will those rates attach to your credit card purchases? You may have a little leeway after you get the notice before the new rate applies. The company can apply the higher interest rate (or certain other changes, see below) to any transactions (such as purchases or cash advances) you make 14 days after the date of the notice. But you don't actually pay the higher interest on those transactions unless you don't pay them off within 45 days of the notice date. For example, say the credit card company notifies you on July 1 that your APR will increase from 15% to 25%. That 25% APR would apply to any purchases you make with the card after July 15. If you haven't paid off the charges for those purchases by August 15 (45 days from the notice date), you will be charged 25% APR. The notice you receive should specify the dates that apply. Unless one of the exceptions listed above applies, the old, lower rate (15%) applies to debt you still owe for transactions before July 15.

Other Changes to Terms and Fees That Require a 45-Day Notice

Changes to some other fees and terms also require a 45-day notice. These include:

- an increase in the required minimum payment, annual fee, minimum finance charge, cash advance fee, late payment fee, balance transfer fee, or returned payment fee, and
- a reduction in the grace period.

Limited Right to Cancel Card and Pay Off

Over Time. If you cancel your card because of the changed terms listed above (other than an increased interest rate, an increased minimum payment, or a change due to you being 60 days late), the credit card company cannot require you to pay off the balance all at once. It can choose to have you pay it off in one of three ways: Under the same terms as applied before the notice, over five years, or with minimum payments double what they were before. You can avoid some of the increased fees (cash advance fee, balance transfer fee, or returned payment) without canceling your card—just stop using the card. For a sample letter canceling the account when you have a right to pay over time, see “Sample Letter to Credit Card Issuer Canceling Card (When You Have a Right to Cancel and Pay Over Time),” below.

No Right to Cancel and Pay Over Time. For some important changes, you do not have the right to cancel and pay over time. These changes include:

- an increase in the annual percentage rate on future purchases
- an increase in the minimum payment

Sample Letter to Credit Card Issuer Canceling Card (When You Have a Right to Cancel and Pay Over Time)

March 16, 20xx

Baylout Bank

1 Baylout Plaza

Knowear, South Dakota 50421

Re: Canceling Credit Card Account Number 4533 2248 2790 2851

Dear Mr. Reepoff:

I received the 45-day notice telling me that you will be eliminating the grace period on my credit card. Having no grace period is not acceptable. When I called the 800 number listed on the notice, I asked that you reconsider, but you insisted you could not. I told you I reject the change and request my account be closed. I write to confirm that I rejected the change and asked to close this account as of March 16, 20xx.

I explained to you that I would be able to pay off the \$500 balance under the existing terms on my account. *[Or include another payoff plan that works for you. Although the credit card company can choose one of these three methods—keeping the same terms, paying at double the minimum payment amount, or paying over five years—it doesn't hurt to propose the method you prefer. If none of these works for you, propose something else.]*

The current terms on my card allow a minimum payment of 1% of the balance each month, plus interest, at a fixed annual percentage rate of 13%. You agreed I could pay off the balance on those terms. Please provide me written confirmation that you have closed this account and that you agree to the payment terms I proposed.

I have notified any business I was aware of that I had authorized to charge my account automatically not to bill this account again. By this letter, I notify you that I revoke any prior authorizations for automatic billing on this account.

Please make this a “hard” close, that is, do not allow any additional charges on this account.

If you report this closing to any credit reporting agency, please notify them that the account was “closed by consumer request.”

If you have any questions you may contact me at 707-937-2205

Sincerely,

Phi Baque

Phi Baque

- a decrease in your credit limit, and
- application of an existing default or penalty rate to future purchases because you did not pay on time or otherwise violated the agreement.

If you cancel the card, because of one of these changes, the company may demand payment of the entire outstanding balance. If you receive a 45-day notice, review it carefully. It should identify changes that allow you to cancel and pay over time.

Even without a right to cancel and pay over time, you can avoid the consequences of some changes by not using the card. If you don't make any new purchases with the card, a higher annual percentage rate, for example, would not affect you. Alternatively, you can always contact the company and ask that it not change the terms, or that it allow you to repay over time if you cancel the card. (See "Sample Letter to Credit Card Issuer Canceling Card," below.)

Explanations Required for Increased Interest Rates

The CARD Act does not prevent credit card companies from looking at your payment history on other loans or credit cards in deciding to change your interest rate on future transactions. (Assuming the increase complies with the notices and rules explained above.) Nor does it prevent credit card companies from increasing interest rates due to market changes. But the CARD Act requires the company to explain why it is increasing your rate. When a credit card company gives you the required 45-day

notice of a rate increase or application of a penalty rate because of your delinquency or default, the 45-day notice must list up to four reasons for the increase, in order of importance. For example, the notice might list market conditions, your credit risk, and your late payment, as reasons for the rate increase. This gives you the opportunity to try to persuade the company that you are a better credit risk than it thinks.

Reevaluation of Higher Rate Required

Every six months, the credit card company must reevaluate its reasons for increasing your rate, and then decrease your rate if appropriate. If the company has increased your APR, before six months has passed, provide information to the company as to why it should lower the rate. If you think the company is not taking its reevaluation duties seriously, consider filing a complaint with the appropriate federal agency. (See, "Where to Complain About Credit Card Abuses," below.)

Term Changes That Don't Require Notice

A credit card company can reduce your credit limit or suspend or end your ability to use the credit card without providing notice to you. The idea is that the credit card company needs to be able to act quickly to prevent further loss or fraud. If the company does suddenly reduce your credit limit, it still must provide a 45-day notice before it can charge a penalty rate or over-limit fee for going over the new reduced credit limit.

Sample Letter to Credit Card Issuer Canceling Card

April 19, 20xx

Broque Bank

1 Broque Bank Plaza

Smauletoun, South Dakota 50421

Re: Canceling Credit Card Account Number 4572 7624 8491 4563

Dear Sir or Madam:

I just received notice with my most recent credit card bill that you are increasing my minimum required payment from 2% to 5%. I will not be able to keep current on my payments with this increase. If I fall behind, late fees will make it even harder for me to pay down my debt. I called your customer service number, but a person named Marcy told me that you would not agree to allow me to keep the 2% minimum payment requirement. I have had this card for more than 10 years and have had a good payment record until I was out of work for eight months during the recession. Even though my new job pays less than my old job, I was still managing to make my payments. By changing the minimum payment, you are making that impossible. I do not want this card any longer. This is your notice that I close my account effective today.

I have notified any business I was aware of that I had authorized to charge my account automatically not to bill this account again. By this letter, I notify you that I revoke any prior authorizations for automatic billing on this account.

Please make this a “hard” close, that is, do not allow any additional charges on this account.

If you report this closing to any credit reporting agency, please notify them that the account was “closed by consumer request.”

I can pay off the outstanding balance of \$500 in payments of at least \$15 a month.

Please send written confirmation that you have closed this account and agree to the repayment terms I specified.

If you have any questions, you may contact me at 408-612-7745.

Very truly yours,

Karen Wood

Karen Wood

Where to Complain About Credit Card Abuses

Up until July 21, 2011, you can file a complaint about a credit card company with the Federal Reserve Board or the Federal Trade Commission. You can contact these agencies as follows:

- FRB: www.federalreserve.gov
- FTC: www.ftc.gov

A new consumer protection agency, the Consumer Financial Protection Bureau, is slated to open on July 21, 2011. This new agency will assume oversight of the new credit card rules.

Credit Card Traps

A handful of companies provide almost all of the credit cards used in this country. Their cards often have a number of the traps listed below, but not all do, and some cards are worse than others. Credit unions and smaller banks may offer better terms.

The descriptions below will help you recognize the traps when choosing a card or deciding which card to get rid of. If a credit card company violates a rule, complain to the appropriate agency (see “Where to Complain About Credit Card Abuses,” above). If you get caught in a trap that is not a violation of the law, consider letting your Congressional representatives know. They may be looking at problems that didn’t get fixed by the new CARD Act.

Avoid Over-Limit Fees

Do you know what the credit limit is on your credit cards? Before 2010, if you went over your credit limit, most credit card companies charged an over-limit fee. The fee usually applied regardless of the reason you went over, or the amount you went over. Companies often charged a fee for each separate purchase made once you went over the limit. And, even if you didn’t make any more purchases, companies would charge over-limit fees indefinitely until you brought the balance below the limit. Some credit card companies also applied a higher “default” or “penalty” annual percentage rate on future transactions if you went over your limit.

The new CARD Act and regulations give you a way to prevent over-limit fees. Credit card companies can’t charge over-limit fees unless you “opt in,” that is, agree in advance that the company can allow transactions that would put your balance over the credit limit. Even if a credit card company processes a transaction over your limit, if you did not opt in, the company cannot charge you an over-limit fee.

The catch: If you opt in, the company can charge over-limit fees. If you do opt-in, the CARD Act places some limits on fees. The company can only charge you one over-limit fee per billing cycle, but it can charge for the same transaction in a total of three billing cycles if you do not bring the outstanding balance below the limit before the bills are due.

The best strategy to avoid over-limit fees is simple—*don’t opt in!* This may require some diligence on your part, so that you don’t

accidentally opt in. Credit card companies are reportedly trying very hard to get people to opt in, perhaps because they get about 10% of their income from penalty fees, including over-limit fees. For example, the companies offer “over-limit protection”—which is really just a way to get you to opt in. Or a credit application may have a box to check or a line to initial or sign that is really an agreement to allow over-limit transactions.

Not sure if you may have opted in by mistake? If you opt in, the company must provide a written statement confirming you agreed to let them process over-limit transactions. You can revoke this agreement at any time. (Although the over-limit fees would still apply to over-limit transactions already processed.) You can revoke the agreement with the same method you used to opt in. So, if you opted in by phone, you can revoke your agreement with a phone call. If you are not certain how you opted-in, contact your credit card company and find out. As always, send a confirmation letter in case there is a dispute later.

New Limits on Penalty Fees

Many credit card companies charge penalty fees for:

- late payments
- over-limit charges (if you opt in), and
- payments returned for insufficient funds.

By 2010, the average late and over-limit fees were \$38. Fees for returned payments were in the same range. The Credit Card Act regulations now limit these penalty fees. The

credit card company must choose one of two methods for setting penalty fee amounts.

Fees proportional to costs. The company can document annually its costs associated with late payments, over-limit transactions, returned payments, or other violations and then charge fees in an amount that is proportional to those costs.

Federal Reserve Board limits. The company can use limits set by the Federal Reserve Board (FRB), which may be adjusted over time. Under FRB limits (as of 2010), the penalty fee can never be more than the dollar amount of the violation. So, if the minimum payment you missed was \$15, your late fee can't be more than \$15. Even so, the company can never charge more than \$25 for one violation, regardless of the dollar amount. If you have another violation of the same kind in one of your next six billing cycles, the company can charge a maximum penalty of up to \$35 for that violation.

Multiple Interest Rates

When credit cards first appeared, each month the credit card issuer applied an annual percentage rate (the interest rate) to the account balance to compute the finance charge for that month. The account balance may include purchases, previous months' unpaid balances, transaction charges, and other fees.

After 1990, card issuers began to introduce cards with a variety of interest rates. Typically, there are different rates for balance transfers and for purchases and cash advances. Sometimes there are different introductory rates on the three types of

use, as well. It can become very confusing to figure out what rate you are paying or compare rates when you want to get rid of cards or get a new card.

Many cards today charge variable rates that are linked to an index that moves with market forces. So from one year to the next, the cost of not paying off your balance each month may change dramatically, for example, from 13% to 25%, depending on how volatile the index is. Even cards with “fixed” annual percentage rates may only be fixed for a period of time, and then change to a variable rate. The credit agreement should specify how long the fixed rate applies. If it doesn’t, the fixed rate should apply for as long as you keep the card. At the end of a fixed rate period, the company generally has to give you at least 45 days notice before it can change the rate.

If you can avoid late charges and over-limit fees, applying the APR to the way you use the account is the main indicator of the actual cost you will pay. As a general rule, look for the lowest and most stable APR that will apply to the way you plan to use the credit card. If you carry a balance from month to month, even a small difference in the APR can make a big difference in how much you’ll pay over a year.

EXAMPLE: Suppose that you have a credit card with an APR of a whopping 28% and that your balance last month was \$1,250. To calculate this month’s finance charge, the credit card issuer multiplies the outstanding balance by one-twelfth of the annual rate ($28\% \div 12$) $\times$ \$1,250 = \$29.16). If you make the

minimum payment required, let’s say, \$32, then \$29.16 pays off this month’s finance charge, so only about \$3 goes to reducing your outstanding balance. If your APR was 13%, only about \$13.54 would go to pay off the finance charge for the month and \$18.45 would go toward paying off the balance. Exactly how much goes to pay off your balance depends on the method of computation the card issuer uses. (See below, “Balance Computation Methods.”)

High Cash Advance Interest Rates and Fees

Using a credit card to get cash advances, or using “convenience” checks the card issuer sent you, can be very expensive.

Additional transaction fees. Most banks charge a fee of up to 5% or so for taking a cash advance. Some waive the fee on convenience checks.

No grace period. Most banks charge interest from the date the cash advance is posted, even if you pay it back in full when your bill comes. A few banks give grace periods for convenience checks.

Very high interest rates. Usually the highest APR is charged for cash advances. APRs of 25% are not uncommon. Even so, you may think it is a way to go, compared, say, to pawnshops, payday loans, or refund anticipation loans. By comparison, this rate could be much better, and an alternative if you can’t get a lower interest loan elsewhere. The catch is that you pay both a fee and interest, so the interest rate (APR) doesn’t

really tell you the full cost for comparison. So, for example, say you get a cash advance or use a convenience check for \$500 and the company charges a 5% fee plus an APR of 25% from the date of the transaction. You will pay a \$25 fee, plus about \$10.42 in interest, for a total of \$35.42, assuming you pay it off within one billing cycle. That amounts to an annual percentage rate of about 85%!

Introductory “Teaser” Interest Rate Offers

Credit card companies know that consumers compare interest rates (APRs), so they frequently offer very low APRs, often on balance transfers. One trick is that the very low APR applies for only a few months and is followed by a very high APR afterwards. If you still have a balance outstanding when the low rate ends, the high rate applies to the balance as well as new transactions.

You may lose the low introductory rate even sooner, for example, if your payment is even one day late. (See “Prohibitions on Interest Rate Increases,” above, for the notice requirements when the company applies the new rate.) The credit card disclosures have to tell you if another rate will apply, but most consumers say they don’t read them.

Little wonder. According to an analysis by Creditcards.com, most credit agreements are written at a reading level too high for 80% of Americans to understand. Even so, the CARD Act regulations now require credit card companies to make the information about transfers, annual percentage rates, and other

important terms much clearer—on their websites and on monthly statements. Smart consumers now can find the tools they need to compare rates. (See below for a sample disclosure.)

Balance Computation Methods

Different cards may seem to offer the same APR, but cost you very different amounts. Credit card disclosures have to tell you which method the company uses to figure your monthly charge (the finance charge).



TIP

The adjusted balance method is best. The best method for consumers is usually the “adjusted balance” method. The most common method is the “average daily balance method.” You are also better off if the method includes payments you make before the due date and excludes purchases during that time.

Adjusted balance. The company determines your balance by subtracting payments you made during the current billing period from the balance at the end of the previous billing period. Purchases made during the billing period aren’t included.

Average daily balance. It credits your account from the day the issuer receives your payment. To figure the balance due, the issuer totals the beginning balance for each day in the billing period and subtracts any payments made to your account that day. New purchases may or may not be added to the balance. Cash advances typically are included. The resulting daily balances are

added for the billing cycle. Then, the total is divided by the number of days in the billing period to get the “average daily balance.” An average daily balance that doesn’t include new purchases is better for consumers than one that does include new purchases.

Previous balance. This is the amount you owed at the end of the previous billing period. Payments and purchases made during the current billing period are not included.

Two-cycle or double-cycle balances. This was the worst for consumers. Fortunately, the CARD Act now prohibits credit card companies from using this balance computation method.

Here’s an example of how these methods of calculating finance charges affect the cost of credit. In this example, the monthly interest rate is 1.5%, the APR is 18%, and your previous balance is \$400. On the 15th day of your billing cycle, the card issuer receives and posts your payment of \$300. On the 18th day, you make a \$50 purchase. Using the:

- adjusted balance method, your finance charge would be \$1.50
- average daily balance method (excluding new purchases), your finance charge would be \$3.75
- average daily balance method (including new purchases), your finance charge would be \$4.05, or
- previous balance method, your finance charge would be \$6.

If you don’t understand how your balance is calculated, ask your card issuer. An explanation also must appear on your billing statements.

Balance Transfer Gimmicks

Low interest offers on the transfer of balances from another card can trick you in several ways.

First, if all you pay on your card is the minimum required payment, the credit card company can apply it wherever it wants, which is usually to the balance with the lowest interest rate. The company does not have to split the payment among the various balances or follow your directions to apply it to a particular balance. Say you have an introductory 0% APR (interest rate) on your transferred balance and a 15% APR on purchases you make on the card. The company makes more money if it uses your payment to pay the balance transfer because it isn’t earning any interest on that, but it is earning interest on the purchases you make on the card. So, it applies your minimum to the transferred balance. However, the CARD Act does generally require that any amount you pay above the minimum payment be applied to the balance with the highest interest. (See Chapter 5.)

Second, credit card companies sometimes use low interest rate offers on balance transfers to get you to reinstate stale debts (debts you already owe the company or ones they purchased from another creditor), on which they could not collect by suing you. Check the fine print on any cards on which you transferred a balance. If you didn’t realize you were renewing an old, stale debt, write the company and tell it to cancel the card and remove the old debt from it. Explain you did not understand that you were agreeing to pay a debt that was too old

to be collected. (Also see Chapter 9 “How to Handle Time-Barred or ‘Zombie’ Debts.”)

Third, the offer may tell you in huge print that the APR is 0%, and you might reasonably think that means there is no charge on the transfer. Not true. Usually there is a “balance transfer fee” of up to 4% or so of the transferred amount. So on a transfer of \$1,000, you would immediately owe \$1,040.

High-Default Interest Rates

According to the U.S. Government Accountability Office (GAO), beginning in the late 1990s, companies started charging default rates. Regular interest rates now average around 10% on fixed-rate cards and around 13% on variable rate cards. But you can easily trigger a “default” rate that is much higher. Thirty percent is common.

What may trigger a default rate? Usually, going over limit or one or more late payments. The default rate applies to any new balance, not just to the late payment. As explained above, after a credit card company raises your annual percentage rate, it must reevaluate it every six months. But you could still wind up paying the default rates for months, years, or indefinitely. And if you are more than 60 days late with a payment, the default rate can apply to the outstanding balance as well (but you can get it reduced on the outstanding balance by making the next six payments on time).

Avoid Deferred Interest Deals

Stores sometimes offer credit card promotions that promise “no interest if paid in full in xx

days.” Be wary of these promotions. If you do not pay off the entire balance by the end of that period, the card issuer may charge interest (usually at a high rate) on the entire amount from the day you made the purchase. So, if you buy a stove for \$500 and pay only \$400 by the end of the zero interest period, the store can charge you interest on \$500 from the day you purchased the stove.

It gets trickier if you already have a balance on the card you use to make the “no-interest” purchase. In that case, any payments on the card will not necessarily go toward the no-interest purchase. The company can apply the minimum required payment as it likes, and anything you pay above the minimum payment amount to the balance with the highest interest rate, with one exception. The company must apply the two payments that come due right before the end of the zero interest period to the zero interest purchase balance.

For example, say you have a \$300 balance with a higher interest rate on the card before you buy the stove. The company can apply your minimum payments to either balance, but will apply all but your last two payments to the higher interest balance, not to the balance for the stove purchase. That means that you may pay \$500 on your card prior to the end of the zero interest period, but still have an outstanding balance for the stove purchase. You can always ask the creditor to apply all of your payments to the “no-interest” purchase first, but the credit card company does not have to comply with your request.

Annual and Other Fees

New fees seem to pop up all the time. Now that the CARD Act has limited the amount of fees for late payments, returned payments, and over-limit charges, expect credit card companies to get even more creative in finding ways to add fees. For example, one card targeting people with poor credit now charges a one-time \$45 “processing fee.” Some of these fees may not even be included in the written disclosures.

No Grace Period

A grace period lets you avoid all finance charges if you pay your balance in full before the date it is due. Before the CARD Act, you had to pay the balance in full to avoid finance charges on the entire balance. Now the CARD Act prohibits finance charges on any part of the balance you pay within the grace period. So for example, if you start with a zero balance, then charge \$300 and pay \$200 within the grace period, the company can charge interest on the remaining balance of \$100, but not on the \$200 you paid. (Prior to the CARD Act, it could charge interest on the full \$300.)

If you can pay, or want to try to move toward paying your balance down, having a grace period is very important. Without a grace period, the card issuer may impose a finance charge from the date you use your card or from the date each transaction is posted to your account, even if you pay your bill in full each month. The CARD Act does not require that companies offer a grace

period, but many credit card companies do, at least on purchases. If they do have a grace period, they must send the bill at least 21 days before the end of the grace period. Most grace periods are from 21 to 30 days. Watch out for cards that offer no grace period at all.

Rewards, Points, Discounts, and Other Perks

Don't be fooled by cards that offer bonuses, let you design the card, or give you discounts. If you will pay high interest or could get hit with high fees of various sorts, or if the card uses one of the worst computation methods, you are better off without the perks.

Trouble Paying Your Bill

Credit card issuers want you to pay your bill—or do they? In fact, they depend on customers who don't pay—or rather, who pay late or pay just a little each month. Credit card interest accounts for about 70% of the profits earned by banks that issue credit cards. Although it's hard to find out, the GAO estimates that another 10% comes from fees, like late payment and over-limit fees. Penalty fees from credit cards added up to about \$20.5 billion in 2009. (The rest comes from the fees merchants pay.)

Although about 29% of Americans have no credit cards, according to a compilation of information by creditcards.com, those who

do have credit cards have about three to four credit cards each. About 56% of credit card users carry a balance on at least one of those cards. Average bankcard debt per credit card user is about \$3,800, about \$1,100 less than in 2009. Most of the decrease is due to credit card companies writing off stale credit card debt. But that doesn't tell the whole story. The average credit card debt for households that have credit cards is over \$15,700.

Despite the recession, credit card offers were higher in 2010 than in 2009. In just three months, credit card issuers sent out more than 1 billion offers, more than double the rate in 2009.



RESOURCE

Learn how credit cards keep people in debt. See *All Your Worth*, by Elizabeth Warren and Amelia Warren Tyagi (2005), for an astute explanation of how credit cards keep you in debt and how your life can be better without them.

Using Credit Cards Wisely

Credit cards can be a great convenience—or a trap that can land you in a spiral of increasing debt for years. How can you tell if your current credit cards are—or if you are shopping for a new credit card, whether it is—loaded with traps?

Credit Card Disclosure Forms

When a credit card issuer sends you an application form or preapproved solicitation

letter, it must, under the federal Truth in Lending Act and Regulation Z, disclose certain terms of your agreement. The disclosures are not what you will likely see first in a credit card solicitation. Although the law requires them to be in a prominent location, often they are tucked away on the back of one of the pieces of paper you receive.

The CARD Act also requires credit card companies to post applications and disclosures on their websites so even if you can't find a copy of your agreement, you can check it online. You can also use the online information to compare and find the best terms. That may help in your negotiations with your credit card company, for example, if the rate or fees it charges are higher than those of its competitors. The disclosures must be in an easy-to-read-table with most of the important information highlighted. You may have to click through several screens to get to the table though. Look for inconspicuous links with labels like “terms and conditions” or “additional disclosures.” Even though the website may ask you to fill in information to see if you qualify, you do not have to provide any personal information to get review the required disclosures.

The Sample Disclosure Form, below, is what you might see from a credit card company. Charge cards (cards that don't charge interest but require you to pay the balance in full each month), must include all applicable terms and any fees or interest charged if the company grants you an extension to pay.

Sample Credit Card Disclosure Form

Interest Rates and Interest Charge	
Annual Percentage Rate (APR) for Purchases	5.45%, 6.45%, or 7.45% introductory APR for one year, based on your creditworthiness. After that, your APR will be 14.99% . This APR will vary with the market based on the Prime Rate.
APR for Transfers	15.45% . This APR will vary with the market based on the Prime Rate.
APR for Cash Advances	17.45% . This APR will vary with the market based on the Prime Rate.
Penalty APR and When It Applies	22.45% . This APR will vary with the market based on the Prime Rate. This APR may be applied to your account if you make a late payment. How Long Will the Penalty APR Apply?: If APRs are increased for a late payment, the Penalty APR will apply indefinitely unless you make the next six consecutive minimum payments on time following the rate increase.
Paying Interest	Your due date is at least 25 days after the close of each billing cycle. We will not charge you interest on new purchases, if you have paid your previous balance in full by the due date each month. We will begin charging interest on cash advances and transfers on the transaction date.
Minimum Interest Charge	If you are charged interest, the charge will be no less than \$0.50.
For Credit Card Tips from the Federal Reserve Board	To learn more about factors to consider when applying for or using a credit card, visit the website of the Federal Reserve Board at http://www.federalreserve.gov/creditcard .
Fees	
Setup and Maintenance Fees	Notice: Some of these setup and maintenance fees will be assessed before you begin using your card and will reduce the amount of credit you initially have available. For example, if you are assigned the minimum credit limit of \$250, your initial available credit will be only about \$209.
Annual Fee	\$20
Account Setup fee	\$20 (one time fee)
Participation Fee	\$12 annually
Transaction Fees	
☐ Transfer	Either \$3 or 2.5% whichever is greater.
☐ Cash Advance	Either \$3 or 2.5% of the amount of each cash advance, whichever is greater.
Penalty Fees	
☐ Late Payment	Up to \$15.
☐ Over-the-Credit-Limit	Up to \$25. We will only charge you an over-the-credit-limit fee if you choose to accept this option.
☐ Returned Payment	\$5.00
How Do You Calculate My Balance? We use a method called "average daily balance (including new purchases)." See Additional Disclosures below for details.	
Can I Lose My Introductory APR? We may end your introductory APR and apply the Penalty APR if you make a late payment.	

Get Rid of Unnecessary Credit Cards

Especially if you've found it hard to rein in your credit card balances, you should avoid having too many cards. Go back through the list of traps, review the credit card disclosures you received for your cards, or if you can't find them, check online, call and ask the creditors about the different APRs, fees, and charges, compare the various costs on the cards you have, and try to choose the card with the best terms for how you use a card. Two is usually plenty.

Some credit card issuers offer you an additional card, even if you are in default on a card from the same credit card issuer. These cards are known as “fee-harvesters.” The offer may tout credit limits “up to \$5,000” or more, but the consumer who applies often winds up with a much lower credit limit, often as low as a few hundred dollars. In the past, fee-harvester cards had so many high fees that consumers would be almost near the credit limit just with the fees, even before making a purchase. Although the CARD Act limits fees during the first year you own the card—they cannot be more than 25% of your credit limit—the rule doesn't apply to late charges, returned payment charges, or over limit charges. And it doesn't apply after the first year. The end result: You'll end up paying high fees on not just one, but two, credit cards.

Here are some rules to follow:

- Close accounts on which you are delinquent, and ask the creditor to identify it to credit reporting agencies as “closed by customer request”—otherwise, the credit card issuer may

close them for you with a negative notation in your credit record. The card issuer will close your account and cancel your privileges. It might also demand that you pay off the balance. Ask that it send you monthly statements allowing you to pay the balance off over time (and any interest and fees that accumulate on it) and suggest a reduced lump sum or a payment plan you can afford. If you're delinquent on all your accounts, keep open the most current account.

- Close accounts that are maxed out. You can close an account even if you haven't paid off the balance. The card issuer will close your account and cancel your privileges. Ask it to send you monthly statements until you pay off your balance. Or contact the bank whose card you are keeping and ask it to transfer the balance on the account you are closing to the account you are keeping.
- If you pay your bill in full each month—that is, you don't carry a balance—close the accounts with the highest annual fees. Make sure that the accounts you keep open have a grace period in which you can pay off your bill and not incur any interest.
- If you carry a balance, close the accounts with the highest interest rates, shortest grace periods, and least favorable balance computation method. Check your credit agreement disclosures to see which method the company uses to calculate interest. (See “Balance Computation Methods,” above.) Keep

the cards that use the adjusted balance method, or if none do, your next best choice is to keep one that uses the average daily balance method, including your payments but not your purchases during the billing cycle.

- If you sometimes find yourself needing to pay at the last minute by phone, get rid of ones that charge extra if you talk to a customer service person to expedite payment. If you think you might make late payments here and there, get rid of ones with the highest late fees and default rates.
- If you got a card for the low-interest offer on a balance transfer, don't keep the balance on the card after the introductory low rate is over. Mark your calendar and plan ahead how you will handle the balance when the low rate expires. Pay off the balance or transfer to a lower-interest-rate card.

Before you close an account, especially one you have had for a long time, consider how it may affect your credit score. On the one hand, if you close an account you haven't used, that has no, or only a small outstanding balance, your credit rating may decrease. Why? The credit report may show your overall debt is now larger in relation to your total available credit. Fair Isaac, the developer of the FICO credit score (see Chapter 17) recommends against closing unused credit card accounts if your purpose is to raise your FICO score. See FICO's "Will closing a credit card account help my FICO score?" in the Credit Q&As and "What a FICO Score Considers" in "Understanding

Your FICO Score," both available at www.myfico.com.

On the other hand, today, many creditors refuse credit to people they believe already have too much credit and some are even closing unused accounts themselves. Having an unused account could be grounds for denying you future accounts you do want or limiting increases on existing accounts. And a notation in your credit report of "closed by consumer request" is better than a notation that the creditor closed your account.

So, to maximize the benefit of closing accounts, close the accounts on which you are in default already, or ones with large outstanding balances owed, particularly ones that are maxed out. But be aware that creditors may close out unused accounts in hard economic times and you may want to close them before they can.

How to Close a Credit Card Account

If you want to close a credit card account, make sure you do it the right way.

- If you have any bills automatically deducted from your credit card, such as a credit card protection plan, gym dues, or DVD rental fees, cancel those billing arrangements directly with the billing company before closing your account.
- Write a letter to the credit card company and request a "hard close." If you don't do this, the company may give you a "soft close," which means new charges can go through, even though you asked that the account be closed. With a soft close, you are susceptible to credit

card fraud or merchants, even ones affiliated with the credit card company, continuing to bill you monthly for services you don't need or want and may not even have realized you were paying.

- Some creditors may refuse to do a hard close until a certain amount of time has passed. If yours is one of them, find out how long you'll have to wait and demand that the company send you a letter then, confirming that the account has been hard closed. As soon as you have paid off any outstanding balance, also ask for confirmation that the balance is zero.
- Request, in writing, that the credit card company report to the credit reporting agencies that your account was “closed by consumer request.” Accounts that are erroneously reported as “closed by creditor” will hurt your credit rating. Ask the company to send you written confirmation that the account was closed at your request.
- After 30 days, check your credit report to ensure that it reflects that the account in question was “closed by consumer request.”
- Once you cancel the card, if you receive a credit card bill for items you canceled directly with the seller or for charges you dispute, use the dispute procedures described below to challenge those charges.
- You should continue to receive billing statements until your balance is zero. If you don't, ask the creditor to send you

regular bills to show the balance and your payments. When you have paid the account off, ask the creditor to send confirmation that your account balance is zero.

Shop Around When Choosing a New Card

Hopefully you've shed any excess cards and any with terrible terms. Or perhaps, because of your money troubles, you have no cards remaining. Having dealt with your troubles, you are now ready to apply for a new card. Take a careful look at the Sample Disclosure Form and review all the new protections and old traps outlined in this chapter. Use the disclosure tables on each company's website to compare offers. Some information won't be in the table, like minimum payment amounts. To find missing information, search online or call the credit card company. Also, because many credit card companies based your interest rate and credit limit on your creditworthiness, you may not know which card will give you the best rate just by reviewing the disclosures.

Now that you're starting fresh, look for a card that matches your needs. For example, if you think you might carry a balance, look for the card with a low APR even after any introductory rate expires. If possible, get a card with a fixed rate rather than a variable rate. If you sometimes pay late, compare fees for late payments. If you are considering a balance transfer, consider not just the introductory rate, but the interest rate that will apply after any introductory period is

over. Avoid cards with high start-up, annual, or other periodic fees, and, of course, don't agree to allow over-limit transactions.

A number of websites compare card features. Avoid the ads and go to the comparison charts. Visit www.consumer-action.org (search for the most recent annual credit card survey), www.cardtrack.com, www.bankrate.com, or www.federalreserve.gov/creditcard/survey.html. Also check with small local banks or credit unions, which may have better terms. Credit cards offered by credit unions usually must be secured by a deposit account at the credit union. To find a credit union you can join and to compare credit union credit card features, go to www.creditcardconnection.org.



CAUTION

Credit card terms can and do

change. Credit card issuers can change key terms of the cardholder agreement with as little as 45 days' notice. Read the inserts that come with each credit card statement for notice of these changes. You won't have much time before the new terms will apply. If you don't like the changed terms, it's time to shop around again or call the credit card issuer.

Finally, if you can't qualify for a regular credit card because of your poor credit history, you may want to consider a secured credit card. Credit unions often offer credit cards with lower interest rates and fees, but they are usually secured by your account. (See Chapter 17 for more on using secured credit cards to reestablish your credit rating.)



TIP

Compare credit card terms online, check disclosures, and review your statement.

The new CARD Act rules require credit card companies to put their offers online so you can compare terms. You will also see better disclosure of important terms before you sign up and with each monthly statement. Be aware, though, that some of the information credit card companies have online or in your statements may not comply with the new law and regulations. And what they do have online may be hidden so you have to click through several pages to find it.

Cards You Didn't Request

If you get a credit card you didn't request, the company assumes full responsibility for its use unless you "accept" the card—use it, sign it, or notify the card issuer in writing that you plan to keep it. (15 U.S.C. § 1642.) Once you accept the card, you are liable for all charges.

If you receive an unrequested card—either for a new account or to replace an expiring card—and don't want it, don't just throw the card away. That doesn't tell the card issuer that you don't want the account or that you want to close it. Your credit file may show that you have an account with an open line of credit for whatever amount you were granted by the card issuer. Today, many creditors refuse credit to people they believe already have too much credit. Having an unused account could be grounds for denying you future accounts you do want or limiting increases on existing accounts.

In addition to cutting up and tossing the card, call the company and inform it of the following:

- that you believe its sending you the unsolicited card violated the law
- that you don't want the card
- that it must cancel the account, and
- that it must provide you with written evidence that it did not, and will not, report the account to any credit reporting agency.

After you call, send a confirmation letter to the company—keep a copy for your files, along with information about the credit card such as the account number and name on the account. Also send a complaint to the appropriate federal agency (see “Where to Complain About Credit Card Abuses,” above). Wait a few weeks, then get your credit report (see Chapter 17) and check to be sure the account is not on your report.

Be aware that some companies may claim they had a legitimate right to send the card. A few years ago, for example, Citibank sent out new credit cards to people with inactive Macy's store credit cards, claiming it was an allowed “replacement card.” Regardless, you can refuse to accept the card.

If you are inundated with credit card offers, it's probably wise to stop the flow. If you need a card, you'll do better to shop around yourself. And if you are trying to get out of debt, you probably don't want to be tempted by a flurry of credit card offers. You can opt out of receiving unrequested “prescreened” credit offers by contacting the national credit reporting agencies at 888-567-8688 or online at www.optoutprescreen.com.

The website is managed by the three credit reporting agencies, which earn money by selling lists to credit card companies.

Not surprisingly, the website attempts to persuade you not to opt out. But, if you call or log onto the website, you can opt out for five years. To opt out permanently, download the form from the website and mail it back.

Rejected and Blocked Cards

In the regular course of using your cards, you may find merchants telling you that the card is “blocked” or has been refused. Here's what's going on.

Blocked Credit or Debit Cards

Have you had a credit or debit card purchase rejected when you were sure you were well under the credit limit? Here's what may have happened. People often use a credit or debit card to buy gas at a “pay first” station, rent a car, or pay for a hotel stay after giving the card to the hotel at check-in as security that they will pay the bill. All of these transactions have one thing in common: The customer is offering the card as payment for a transaction, but because the business doesn't yet know the total that will be billed, the business puts a “hold” on your debit or credit card for the estimated amount you will spend. Usually the amount withheld is not that large and is held only for a short time. Unfortunately, some businesses have been known to hold much more than the estimated amount you'll spend and keep the hold in place for up to 45 days.

Whenever you pay with a credit or debit card at a gas station, hotel, rental car agency, or anywhere else you provide your card before the amount of the bill is certain, you can protect yourself in one of two ways:

- Pay with the same card, not with cash or a different card than the one you gave initially. That way the hold should come off within a short time after you pay.
- When you pay, remind the business to remove the hold from the card you provided, now that you have paid your bill.

Rejected Credit Cards

When a merchant swipes your card, it's contacting a credit card guarantee company that has a record of your credit status. The guarantee company checks for:

- **Your overall credit limit.** If you've exceeded your line of credit, the guarantee company probably will tell the merchant to reject your card.
- **Your daily limit.** Many credit card companies do not let cardholders use their card more than a certain number of times a day or spend more than a certain amount per day. This is meant to protect against the use of stolen cards. If you've exceeded the daily limit, the merchant will be told to reject the card.
- **The amount of the particular purchase.** Merchants must check with the guarantee company for approval on purchases larger than a certain dollar amount (called a "floor limit"), which

varies among guarantee companies and merchants.

- **Whether you are late on a payment.** If you often pay late, the guarantee company may tell the merchant to reject your card.
- **Whether the card should be taken away from you.** If the card was reported stolen or if you are excessively delinquent in your payments, the guarantee company will tell the merchant to keep it. Some merchants receive rewards for turning in revoked cards. Most merchants, however, refuse to confiscate cards and instead simply tell you your card was not accepted.

Liability If Your Credit Card Is Lost or Stolen

Most credit card issuers don't hold you liable for any charges made by a thief, as long as you're fairly prompt to report the card stolen. (The same is true for debit cards.) Under federal law, how much you could be liable for depends on whether the thief presented the card in person or not.

If the card was personally presented to make the purchase, the issuer could hold you liable for no more than \$50 in fraudulent charges. If the thief spent less than \$50 dollars before you notified the issuer of the theft or loss of your card, you would only be liable for that smaller amount. (15 U.S.C. § 1643; 12 C.F.R. § 226.12(b).) That's why you don't need to pay extra for loss or theft protection. The most you could be liable for

is \$50. But, you should report the theft or loss as soon as possible anyway. If you don't, the creditor may not believe that the card was lost or stolen.

If the thief didn't present your card in person, but, for example, used your card by phone or on the Internet, you have no liability. (12 C.F.R. § 226.12(b) Official Staff Commentary.) Even so, if you don't report the loss as soon as possible, the creditor may not believe that the card was really lost or stolen. So, be sure to report it right away.

Must You Provide Personal Information When You Use a Credit Card?

When you use your credit card, can the merchant record your address and phone number on the credit card slip? No. In fact, merchants' agreements with Visa and MasterCard do not require a customer to furnish a phone number when paying with Visa or MasterCard. Also, several states bar merchants from recording personal information when you use a credit card. The purpose of these state laws is to make it more difficult for unauthorized persons to obtain personal and financial information about credit card users. Try to not give your address, phone number, driver's license number, or other identifying information when you use your credit card. The credit card issuer already has this information, and the merchant normally does not need it (unless, for example, you want your purchase delivered).



CAUTION

Your liability is greater if you lose a debit card. Debit card rules don't provide as many protections as do credit card rules—so if you lose the card you may lose a lot more money. See below to learn more about the disadvantages of using debit cards.

Where to Call If You Lose Your Card

Your monthly billing statement or credit card disclosure lists the phone number and address for reporting lost or stolen credit cards. Or call toll-free information, 800-555-1212, and ask for the number of your credit card issuer. Better yet, make a list of the customer service numbers for all of your credit cards and keep the list in a safe place at home and take it with you if you travel.

When you discover that a credit or charge card is lost or stolen, call the customer service department of the card issuer at once. Get the name of the person you speak to and get an address. Then, send a confirming letter like the one shown below, keeping a copy for your records. If the credit card issuer doesn't agree to remove the fraudulent charges within a few days, you need to send a letter to trigger the dispute protection measures explained below.

Because the credit card issuer is liable for unauthorized charges once it's notified, it will usually act fast. The issuer will cancel your existing account, open a new one for

you, issue you a new card (and may send it by overnight mail), and remove all fraudulent charges from your statement.

Sample Letter Confirming Telephone Notice of Lost or Stolen Card

March 2, 20xx

Large Oil Company
Customer Service Department
1 Main Street
Enid, OK 77777

Attn: Natalie Revere

Re: Account No. 1234 5678 9012

Dear Ms. Revere:

This is to confirm my telephone call of March 1, 20xx, notifying you that I lost my Large Oil Company credit card on February 26, 20xx, while I was on vacation at the Grand Canyon.

I understand that under the law, my telephone call serves as timely notice to your company.

I further understand that I am not liable for any unauthorized use of this card from the time of my telephone call, and the maximum I am liable for on charges made before my notification is \$50.

Please contact me immediately if you have any questions.

Sincerely,

Amalia Kiran

Amalia Kiran



TIP

Skip the credit card “protection.”

Some credit card issuers urge cardholders to buy—for up to \$50 per year—credit card protection to guard against unauthorized use of credit and charge cards. Given that your liability for unauthorized charges is \$50 maximum, and then only for charges made in person before you notify the card issuer, this “protection” is a waste of money. Even worse, the FTC warns that scammers contacting consumers to sell bogus credit protection plans may use the information you provide to defraud you, including stealing your identity.

Unauthorized Use of Your Card by an Acquaintance

The rules that apply to lost or stolen cards apply when someone used your card without your authorization, but here the question is whether you authorized the use. If you implicitly, or apparently, gave authority to the other person, the company can hold you liable.

Suppose you sometimes allow your 25-year old son to use your card, or gave him a card to use for emergencies, but he has been using it for beer and pizza, and you have allowed those purchases previously. From the credit card issuer’s viewpoint, it appears you gave your son authority to use the card, including, for the purchase of a very expensive TV or audio system that now appears on your statement. On the other hand, if your adult daughter, who you

never allowed to use your card, took your card without your knowledge and charged a trip to Hawaii, you should be able to argue successfully that the company has no basis to believe you authorized her, and the law limits your liability in the same way as if your card was lost or stolen by a stranger.

Your biggest obstacle will be convincing your card issuer that you did not authorize your son, your daughter, or any other person to use your card. If the person took your card, or used your card number, take the same steps to call and report it and get a new card as if a stranger stole your card. Then, your best bet is to send a letter explaining the situation to the card issuer. For example, emphasize that you never allowed your daughter to use it in the five years you have had the card, and you were not at home and your daughter went to your bedroom, took your card, and used it without your ever knowing it. (See below for how to dispute charges on your bill.)

If you follow the measures to dispute a bill explained below and the credit card issuer still claims you owe the bill, you can choose not to pay. The issuer will no doubt close your account and, if the amount is high enough, sue you. If you want to fight it, you'll probably need a lawyer to help you defend yourself. (See Chapter 19 for tips on finding a lawyer.) You may be best off paying the bill and buying a safe into which you can put your cards—and all papers with the account numbers—to keep them from getting into the hands of people who shouldn't be using them.

To Dispute a Credit Card Bill

There are several reasons you might dispute a credit card bill. There might be a simple math error on the bill, such as a charge for \$550 rather than \$55. There might be charges that you made but don't think you should have to pay—for example, because you returned a defective item or an item you bought didn't work properly. Or, if your credit card information was lost or stolen, unauthorized charges might appear on your bill.

Although credit cards can trap you with high, hidden, or unexpected interest and fees, the Truth in Lending Act and Regulation Z provide better protection (at no extra cost) when you dispute a credit card charge than if the payment were by check or cash. You have two different ways to challenge charges for goods or services on your credit card: billing error disputes (12 C.F.R. § 226.13) or disputes asserting a claim or defense (12 C.F.R. § .12). Each way has different requirements and limits. Sometimes one way applies, sometimes the other, sometimes both. So, consider both options when you have a problem with a credit card purchase or with a charge that shows up on your credit card bill.

Resolving Disputed Charges With the Credit Card Billing Error Process

If you find an error in your credit card statement, immediately write to the company that issued the card. Send a separate letter; don't just scribble a note on the bill. The credit card company must receive your letter

within 60 days after it mailed the bill to you. (If you missed the 60-day time limit, you may be able to dispute the bill under the claim and defense right explained in the next section.)

You can write a letter like the one shown below, “Sample Letter to Notify of Credit Card Billing Error.” Give your name, your account number, an explanation of the error, and the amount involved. Also enclose copies of supporting documents, such as receipts showing the correct amount of the charge. Send the letter to the particular address designated by the creditor for this purpose. Check the back of your statement for this address or call the company to get it. You can withhold the portion on the credit card bill that you dispute, including finance charges, but you must pay the portion that you do not dispute.

The credit card company must acknowledge receipt of your letter within 30 days, unless it corrects the error within that time. The card issuer must, within two billing cycles (but in no event more than 90 days after it receives your letter), correct the error or explain why it believes the amount to be correct.

If your bank issued the card and you have authorized automatic payments from your deposit account, the bank cannot deduct the disputed amount or related finance charges from your account while the dispute is pending if it receives your billing error notice at least three business days before the automatic payment date.

During the two-billing-cycle/90-day period, the card issuer cannot report the disputed amount as delinquent to credit reporting

Sample Letter to Notify of Credit Card Billing Error

May 20, 20xx

Eighteenth Bank of Cincinnati

1 EBC Plaza

Cincinnati, OH 44444

Attn: Customer Service

Re: Billing Error on Bradley Green Account
Number 123 456 789 0000

To Whom It May Concern:

I have found a billing error on my MasterCard statement dated May 15, 20xx.

There is a charge on my MasterCard, dated March 25, 20xx, for \$1,000 for a spa located in Cincinnati. I did not make that purchase. I was on vacation from March 20 through March 30 in Nashville. You will notice charges on my statement during that time period for businesses in Nashville. Please delete that charge. I will pay the rest of my bill, excluding that charge. I understand that the law requires you to acknowledge receipt of this letter within 30 days unless you correct this billing error before then. Furthermore, I understand that within two billing cycles (but in no event more than 90 days), you must correct the error or explain why you believe the amount to be correct.

I have also enclosed a copy of the receipt for my hotel in Nashville, for your information.

Sincerely,

Bradley Green

Bradley Green

agencies or other creditors. Likewise, the card issuer cannot threaten or actually take any collection action against you for the disputed amount. But it can include the disputed amount on your monthly billing statements. And it can apply the amount in dispute to your credit limit, thereby lowering the total credit available to you. The card issuer can also add interest to your bill on the amount you dispute, but if the issuer later agrees you were correct, it must drop the interest accrued.

If the card issuer sends you an explanation but doesn't correct the error, and you are not satisfied with its reason, you have ten days to respond. Send a second letter explaining why you still refuse to pay. If the card company then reports your account as delinquent to a credit reporting agency or anyone else, it must also state that you dispute that you owe the money. At the same time, the issuer must send you the name and address of each credit reporting agency and anyone else to whom it reports the delinquency. When the dispute is resolved, the issuer must send a notice to everyone to whom it has reported the delinquency.

If the card issuer doesn't comply with any of these error resolution procedures, it must credit you the amount you disputed, plus the interest on that charge, up to a total of \$50, even if the bill was correct. States may provide greater protection. In California, for example, if the card issuer doesn't comply with the two billing cycle/90-day time limit, you don't have to pay any portion of the disputed balance and may be able to collect triple damages. (Cal. Civil Code § 1747.50.)

Another option is to sue the company for a violation of the Fair Credit Billing Act. (15 U.S.C. § 1640.) Suing a credit card issuer can be difficult. If the amount is small, you can use small claims court. If you decide not to sue, you should still report the problem to the appropriate government agency. (See Appendix A for contact information.) You may also want to cancel the card if you don't like the way the company treated you.

What Is a Billing Error?

Billing errors include:

- an extension of credit not clearly identified on your bill
- a math error
- a charge on your bill for which you need more information
- failure to mail you a periodic statement
- an extension of credit to someone who was not authorized to use your card
- an extension of credit for property or services that were never delivered to you
- the company's failure to credit your account properly, and
- an extension of credit for items that you returned because they were defective or different from what you ordered.

Resolving Disputed Charges With the Credit Card Claim or Defense Process

If a business fails to resolve any dispute about property or service purchased with a

consumer's credit card, the consumer may withhold payment on the credit card up to the amount outstanding for that purchase. (15 U.S.C. § 1661i & 12 C.F.R. § 226.12(c).) So, if you believe you shouldn't have to pay a charge on your bill—for example, because the item you bought was defective, the business sent the wrong item, or you did not authorize the person who made the purchase to use your card—you can often withhold payment if the seller refuses to replace, repair, or otherwise correct the problem.

If you dispute a charge because an item was not delivered as ordered, you refused to accept it because it was defective, or you did not authorize the person who made the purchase to use your card, you could also use the billing error process to dispute the charge. But if you missed the 60-day deadline for a billing error dispute, you may be able to use the claim or defense dispute method instead.

Unlike the rules for a billing error, a claim under the claim and defense remedy does not have a 60-day limit; it has a different limit. You can withhold only the balance on the disputed item or service that is still unpaid when you first notify the seller or card issuer of the problem. If you already paid part of the credit card bill, the amount you paid is applied first to late charges, then to finance charges, then to your purchases, starting with the oldest. So, if you owe a lot of fees and charges and have other purchases included in the credit card statement, you may not have paid off much—if any—of the disputed amount.

There are some other conditions you must meet in order to use this law.

- First, you must make a good-faith effort to resolve the dispute with the seller.
- Second, you must explain to the credit card company, in writing, why you are withholding payment.
- Third, if you used a Visa, MasterCard, or other card not issued by the seller, you can refuse to pay only if (1) the purchase cost more than \$50, and (2) you made the purchase in the state where you live or, if you live in a different state, within 100 miles of your home. (Your state's law determines whether a purchase you made from home by telephone or on the Internet is considered a purchase made in your state or in the state where the merchant is located.)

These distance and amount limitations don't apply if the credit card was issued by the seller (such as a department store card), the seller controls the card issuer or vice versa, or the seller obtained your order by mailing you an advertisement in which the card issuer participated, urging you to use the card to make the purchase.

EXAMPLE: Nan charged a raincoat from Cliff's Department Store on her Cliff's credit card. When she got home, she discovered that the lining was torn. Cliff's refused to replace the coat or refund her money. Nan has the right to refuse to pay her bill as long as she first tries to resolve the problem with Cliff's and hasn't yet paid the portion of the credit card bill for that purchase. Had Nan charged the coat on her Visa card, she could refuse to pay only if Cliff's was

located in the state where she lived or within 100 miles of her home and if the raincoat cost more than \$50.

If you conclude that you are entitled to withhold payment, write a letter to the credit card company explaining why you aren't going to pay. Describe the steps you took to resolve the problem with the merchant. Before you mail the letter, look at the fine print on the back of your bill or call the credit card company to find out where to send it. Credit card companies have special addresses they use for this type of correspondence. If you don't send it to the correct address, the company can disregard your letter. Send a letter like the one shown below, "Sample Letter Raising Claim to Credit Card Bill." And don't forget to keep a copy of the letter for your records.

If you can't resolve the dispute, it can form the basis of a claim in a lawsuit you file or a defense if you are sued for the debt (see Chapter 14), but only up to the amount you have not paid on the disputed debt.



CAUTION

Check your credit report following a dispute or error. Despite laws designed to protect consumers, a credit card issuer may negligently report an outstanding balance it removed from your card, fail to report that you dispute a charge, or fail to report that the dispute is resolved. Be sure to check your credit file. (See Chapter 17.)

Sample Letter Raising Claim to Credit Card Bill

June 1, 20xx

VISA International
1000 Visa Place
Kreditt City, South Dakota 70502

Re: Claim for defective purchase from Cliff's
Department Store

To Whom It May Concern:

I charged on my VISA card a winter coat that I bought from Cliff's Department Store for \$89. It was supposed to be washable. I wore the coat for a couple of months, then I washed it, according to the instructions, but it shrank. I took the coat back to Cliff's and was told to leave it there so they could have their buyer look at it. After several telephone calls with different people over a couple of weeks, Cliff's finally said they would not refund my money or replace it with another coat. I still owe for that coat on my VISA card. I am making a claim under 15 U.S.C. § 1661i & 12 C.F.R. § 226.12(c). Because the item was not as represented, and Cliff's refused to replace it or refund my money, I do not believe I am required to pay for the coat. Please deduct that amount from my credit card bill. Thank you.

Sincerely,

Marge Bright
Marge Bright

cc: Cliff's Department Store

Debit Cards

More and more people have debit cards, and consumers use debit cards more often than cash, credit cards, or checks individually, according to 2010 a survey by the Federal Reserve Bank of Boston. Unlike a credit card, debit cards directly, and pretty much immediately, withdraw money from your bank account.

Some believe that debit cards are a good alternative to credit cards, because they may help you curb spending. Does that mean debit cards are a good deal for consumers? Not necessarily, at least, not yet. Although the federal Electronic Funds Transfer Act (15 U.S.C. § 1693; 12 C.F.R. § 205 et seq.) provides some protections for people using debit and ATM cards, it still leaves a lot of traps that can end up costing consumers lots of money.

Here's why you should be extremely careful when using debit cards.

No grace period. If you have a grace period on your credit card (and you should avoid any that don't), and you pay your bill in full each month, you get the benefit of the use of the money in your bank account until you pay your credit card bill at the end of the month. (Of course, if you don't pay your balance in full each month, you will pay finance charges, and if you pay late, a late payment fee.) With a debit card, the money is taken almost immediately from your account.

No protection for defective purchases.

Unlike credit cards, if you have a dispute with a store or other seller about a product or service you bought with a debit card, there is no process to dispute the bill or assert a claim or defense because the

product or service was not as promised, defective, or never provided. If you do have a debit card, don't use it for major purchases, especially ones that require a large up-front deposit. However, banks are required to have a process for reporting errors for things like mistaken transfers, transfers from the wrong account, or transfers in the wrong amount. An explanation of how to report such an error is provided either on your initial agreement or with each statement.

Less protection for lost or stolen cards.

With a credit card, your maximum liability if a lost or stolen card is used to charge items is either \$50 or nothing. Period. With a debit card, if you report the loss or theft within two days after you discover it, your maximum loss for unauthorized debits is \$50. If you do not report the loss or theft within two days after discovering it, your loss could be up to \$500 of unauthorized debits. If there is an unauthorized debit on your monthly statement that you don't report within 60 days, your loss for unauthorized debits from your account is unlimited and continues from 60 days until you do report the unauthorized transaction listed on your statement. If you can convince the bank that there were extenuating circumstances preventing you from notifying it, it must extend the period for reporting for a "reasonable period." If you do use a debit card, it is imperative that you check the monthly statements carefully.

Fees and notice of changing terms. There is no limit on the kind or amount of fees that banks may charge for debit cards. Often you have to pay a fee when you use your debit card at an ATM or store. You only get

a 21-day notice if the bank increases fees or limits your privileges. And, if necessary for the safety or security of the account or the system, the bank may make changes with no notice.

Theft. Debit cards are reportedly more susceptible to theft than credit cards because thieves can set up readers to get your pin number when you enter it at a store or other location. To avoid this, choose the “credit” button when you use a debit card—usually this will prompt the system to ask for a signature, instead of a pin. Although the money still comes from your bank account, by using a signature instead of a pin you can prevent thieves from “skimming” your pin number.

Overdraft Fees. Overdraft fees are one of the most expensive features of debit cards. Banks often allow you to use more money than is in your account, and then charge a high overdraft fee. Some banks charge an overdraft fee for each purchase that is above the amount in your account, even if you make several purchases in one day. And reportedly, some banks purposely debit the largest purchase first in order to trigger an overdraft on that and each of the smaller amounts that would not otherwise have triggered an overdraft. Overdraft fees of up to \$35 are not uncommon. Banks also often offer so-called overdraft or “bounce” protection plans—instead of paying a fee for each overdraft, you pay a high fee for the plan.

Until 2010, even if consumers requested not to have an overdraft service, banks might not have honored that request. Now, as a result of a new Federal Reserve Board rule, banks cannot charge you for overdraft fees or an overdraft plan on a debit or ATM card

unless you request it. If you plan to keep a debit card, despite all the negatives, don’t opt in for overdraft protection. The possible embarrassment of a rejected transaction if your account is empty is well worth the money you will save by avoiding overdraft fees.

Many consumers opt into overdraft protection without meaning to. The notice explaining your right is not particularly clear and banks, which make a lot of money from overdraft fees, are busily getting consumers to opt in for overdraft service or protection. Check all solicitations you have received or signed. If you have already opted into overdraft protection or a plan, you can opt out, whenever you want.

Even if you are careful not to opt into overdraft protection, banks can still charge overdraft fees for checks and for regular debits that you have authorized (for example, when you authorize a utility company to automatically debit your account each month). This means that you must keep track of how much money you have in your debit account. Because debit cards don’t come with a register, like checks do, you must set up your own tracking system. By doing this, you will avoid rejected transactions and overdraft fees for checks and regular authorized debits.

Cheaper fees on the way? As the result of the Dodd/Frank Wall Street Reform and Consumer Protection Act of 2010 and some large class action antitrust lawsuits, you may see a reduction in debit card (and even some credit card) fees. Sellers will be able to offer discounts if you pay with cash or one of the debit or credit cards that charge the seller

less. For now, if you want avoid using credit cards, you are probably best off using checks or cash, although as debit cards improve that may change.

Prepaid Debit Cards

Another alternative to cash or a credit card is a prepaid card. These look like debit cards and usually have a bank or credit card name brand. Prepaid cards are reloadable cards that can be used to make payments. The cards are sold at various stores and major retailers, and offered by such businesses as

tax preparation companies to pay your tax refund. With some, you can even have your wages loaded on the card.

Prepaid cards lack the protections that come with debit and credit cards. And they are loaded with high fees. According to an August, 2010 Consumers' Union report, prepaid cards often come with monthly fees, activation fees, fees to get cash, fees for customer service, overdraft fees, and more. In combination, the fees might cost you more than a credit card with a very high interest rate. If offered a prepaid card, take cash instead.



Understanding Loan and Other Credit Documents

Required Credit Disclosures	212
Closed-End Credit.....	212
Extra Protections for High-Cost Loans.....	213
HOEPA	215
Higher-Priced Mortgage Loans.....	216
Terms of Credit Agreements.....	216
Acceleration	217
Attorneys' Fees.....	217
Balloon Payment	217
Confession of Judgment.....	218
Cosigner or Guarantor	218
Credit or Mortgage Insurance.....	219
Prepayment Penalties	220
Pyramiding Late Fees	220
Security Interest.....	221
Wage Assignment.....	221
Waivers of Exemptions.....	227
Mandatory Arbitration	227

“A bank is a place where they lend you an umbrella in fair weather and ask for it back when it begins to rain.”

—Robert Frost,
American poet,
1875–1963

Before you can negotiate intelligently with a lender, you need to carefully read your credit agreement and try to understand all of its terms. This chapter will help you understand the terms you’re likely to find in an agreement and explains what the lender was required, under law, to spell out for you. If you think that the lender may have violated the law, consult an attorney—you may be able to use the violation as leverage in negotiating with the lender.

Required Credit Disclosures

The federal Truth in Lending Act (TILA) requires lenders to give consumers specific information about the terms of credit before signing an agreement. (15 U.S.C. §§ 1631 and following.) TILA applies to consumer credit cards and most other types of consumer credit if the creditor either charges for giving credit (called a finance charge) or if there is a written agreement requiring four or more installment payments. Before July 21, 2011, TILA does not apply to credit transactions in an amount more than \$25,000 if it is not secured by the consumer’s home; after that date the rules cover transactions up to \$50,000.

The disclosures required are different for open-end credit (credit on which you continually make new charges and payments, such as credit card accounts) and closed-end credit (fixed purchases, such as a home or car loan, that you will pay off over a set period of time). Closed-end credit can be in the form of a credit contract with the seller (a car dealer that finances its cars) or in the form of a loan from a financial institution or other lender. Disclosures for open-end credit like credit cards are discussed in Chapter 10.

Closed-End Credit

The required disclosures for closed-end credit are extensive. Among other things, the lender must give you information about:

- the amount financed (the amount of credit provided). That includes both the money you actually get and most of the charges for getting the loan, as well as any money used to pay off outstanding debts.
- an itemization of the amount financed or a disclosure of your right to get an itemization, if you ask for it. (Always ask so you can see what you are being charged for.)
- the finance charge (the amount the credit will cost you, including interest and certain fees)
- the annual percentage rate or APR (the cost of the credit on a yearly basis). In a few situations where the loan amount is very small, this is not required.
- the total of payments (the sum of the amount financed and the finance charge)

- the total number of payments needed to pay off the loan, the amount of each payment, and the payment schedule
- whether the lender is taking a security interest in the property being purchased
- the amount or percentage of any late fee
- any prepayment penalty or refund of unearned finance charge if the loan is refinanced or paid off early
- if the creditor is also the seller, the total price of the item or service plus all other charges, and
- special disclosures for adjustable-rate residential mortgages (loans where the interest rate fluctuates), including the maximum possible interest rate.

Below is a sample of the form that creditors use to make these disclosures. The lender must give you these disclosures before it extends credit to you.

Home mortgages require additional disclosures. Effective January 2011, for variable rate mortgages (where interest rates and payments change), mortgage lenders must also disclose how your payments and interest rate will change over time. In addition, if the loan has a variable rate, the lender must provide a booklet on adjustable rate mortgages to explain how the rate may change. This change in the law was prompted by the many victims of “teaser” rate mortgages, popular during the housing bubble. These rates automatically reset to a much higher rate after a few years, even if the interest rate market did not go up. Others wound up with loan payments that were too small to pay off any principal, until payments reset to much higher levels. Below

is a sample disclosure for a variable rate mortgage.

For most home mortgage transactions, the lender must give you good faith estimates of this information within three business days after the lender receives your loan application and at least seven days before you sign the loan documents. The lender also has to provide a new set of disclosures if the terms change, but only three business days before you are scheduled to sign the loan documents. Well in advance of the date you are scheduled to sign the loan documents, ask the lender if there are any changes to the good faith estimates provided. If the agent or lender lets you know you will not be receiving the terms as originally indicated, ask for a new set of disclosures right then so you can see how it will affect you, before the last minute when you may feel pressured to sign.

In most cases, if a loan secured by your home is not being used to finance the purchase of a house (such as second mortgages to finance home improvements), the lender must also give you notice of your right to cancel the loan within three business days after you sign the loan documents. This is called a “cooling-off period” and can be longer than three days in some circumstances. (See Chapter 3 for more information.)

Extra Protections for High-Cost Loans

TILA now places additional requirements on mortgage loans that have rates and fees much higher than the normal prime rate. The intent is to stop scammers who try to steal

Sample Disclosure Form

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sales Price
The cost of your credit as a yearly rate	The dollar amount the credit will cost you	The amount of credit provided to you on your behalf	The amount you will have paid after you have made all payments as scheduled	The total cost of your purchase on credit, including your downpayment of \$_____
%	\$	\$	\$	\$

You have the right to receive at this time an itemization of the amount financed.

☐ I want an itemization ☐ I do not want an itemization

Your payment schedule will be:

Number of Payments	Amount of Payment	When Payment Is Due

Insurance

Credit life insurance and credit disability insurance are not required to obtain credit and will not be provided unless you sign and agree to pay the additional cost.

Type	Premium	Signature
Credit life		I want credit life insurance _____ Signature
Credit disability		I want credit disability insurance _____ Signature
Credit life and disability		I want credit life and disability insurance _____ Signature

You must obtain property insurance from anyone you want that is acceptable to ____*[creditor]*____. If you get the insurance from ____*[creditor]*____, you will pay \$_____.

Security: You are giving a security interest in:

- ☐ the goods or property being purchased
☐ (brief description of other property)

Filing fees: \$_____ **Nonfiling insurance:** \$_____

Late Charge: If a payment is late, you will be charged \$_____/_____% of the payment.

Prepayment: If you pay off early, you:

- ☐ may ☐ will not have to pay a penalty.
☐ may ☐ will not be entitled to a refund of part of the finance charge.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

equity, particularly from low-income and older homeowners. There are two different categories of higher-cost loans.

HOEPA

The Home Ownership Equity Protection Act (HOEPA) (12 C.F.R. § 226.31-32) requires additional disclosures and places many restrictions on secured loans that are:

- closed-ended—those repayable over a set period of time at set amounts
- secured by your primary residence
- not used to buy or construct the property, and
- burdened by an annual interest rate that's at least ten points (eight points for first-lien loans after October 1, 2002) above the rate on comparable government securities, or the total fees and charges are at least \$592 (which may increase each year based on the consumer price index) or greater than 8% of the amount borrowed.

HOEPA requires lenders to provide potential borrowers with additional disclosures and the following warning three days before signing the loan papers:

You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan.

For a loan to refinance a mortgage made after October 1, 2002, the lender must also describe the total amount borrowed and whether this amount includes the cost of optional insurance.

HOEPA also prohibits a lender from adding certain features to a loan, such as:

- a prepayment penalty
 - that applies for two years or more
 - on a refinance by the original lender or an affiliate, and
 - the borrower's debt payments are 50% or more of the borrower's income, or
 - the payments may change in the first four years of the loan
- balloon payments, if the loan period is for less than five years negative amortization (your payments are less than the interest owed, so the amount you owe gets larger instead of smaller)
- two or more payments paid in advance from the loan proceeds
- an increased interest rate after default, and
- an unfair calculation of the reduced amount of interest owed after a loan is accelerated.

(See “Terms of Credit Agreements” below for an explanation of prepayment penalties and balloon payments.)

Additional restrictions apply to HOEPA loans. They may not be made to a person who cannot afford to repay the loan. They cannot be refinanced within one year unless there is a clear benefit to the borrower. And if the loan is for home improvement, the lender cannot pay the contractor directly, but must provide payment to you or jointly to you and the contractor.

HOEPA provides the same three-business-day cancellation right as other nonpurchase loans secured by your home.

It is complicated to determine if a loan qualifies as a HOEPA loan and, if it does, whether the lender complied with the law. If you think your loan might qualify as a HOEPA loan, consult an attorney as soon as possible. If you're already in foreclosure, you may be able to use lender violations of TILA and HOEPA as a defense to the foreclosure.

Higher-Priced Mortgage Loans

Beginning October 1, 2009, additional requirements were placed on most subprime closed-end loans on consumers' homes. Subprime loans are loans with higher interest rates and fees. This regulation is intended to deal with loans that do not fit the HOEPA criteria, but are still subprime loans. During the housing bubble, many consumers were induced to take out high-cost loans they could not possibly repay. Lenders typically offer subprime loans to people who have poor credit, don't shop around and don't think they qualify for a better loan, or who are defrauded into believing they are getting a good interest rate and low fees.

The new requirements do not change required disclosures, but do affect some of the terms that may be included in loans, loan applications, and loan disclosures, as follows.

- Lenders must base loan approval on the consumer's ability to pay.
- Lenders must verify income and assets. (During the housing bubble, a number of subprime lenders made so-called

"no-document loans" for which the lender would falsify additional income to include on loan applications so consumers would qualify for a loan.)

- Loans cannot include prepayment penalties that last longer than two years, apply to a refinancing by the lender or an affiliate, or are included in a loan in which the payment can change within the first four years.
- Loans must include escrow accounts for taxes and insurance, but borrowers can cancel the account after 12 months.
- Loans cannot be structured as if they were open-end loans to avoid these rules.

A first mortgage is subject to the Higher-Priced Mortgage Loan requirements if its rate is 1.5% higher than the average prime loan rate, according to statistics the Federal Reserve Board publishes. A subordinate loan (such as a second mortgage) is subject to the requirements if the rate is 3.5% higher than the average prime loan rate.

As with HOEPA loans, it may be difficult to tell if your loan is subject to the Higher-Priced Mortgage Loan rules. Violations of these rules may be useful as a defense to foreclosure. If you think your loan might qualify as a higher-priced mortgage loan, and you are having difficulties paying, consult an attorney.

Terms of Credit Agreements

In looking over your loan agreement, these are the terms you may come across.

Acceleration

This clause lets the lender declare the entire balance due (“accelerate” the loan) if you default—that is, miss a payment or otherwise violate a term of your loan agreement (by failing to pay taxes or maintain required insurance, for example). If you miss one or two payments, the lender will probably agree to hold off accelerating the loan if you pay what you owe and pay the remaining balance on time. If you miss additional payments, however, you can be sure you’ll fall from the lender’s good graces.

Once a loan is accelerated, it’s very difficult to get the lender to “unaccelerate” and reinstate your old loan. In some states (and if the state doesn’t specify otherwise, also on loans sold to Fannie Mae or Freddie Mac), you may be able to reinstate your loan by paying the past-due amounts and fees, even after the loan was accelerated, up to five days before a foreclosure sale.

Attorneys’ Fees

Many creditors include a provision in a loan contract awarding them attorneys’ fees if you default and they have to sue you to get paid. If your contract contains this provision but says nothing about your right to attorneys’ fees, most states give you the right to attorneys’ fees if you are sued—or you sue—and you win. Several states prohibit the creditor’s attorneys from collecting from you a fee in excess of 15% of the amount you owed.

Balloon Payment

To make loans seem affordable, or to qualify borrowers who couldn’t afford the monthly payments when they applied for loans that required repayment in equal monthly installments for a set period, some loans are set up with regular payments too small to pay off the loan. However, they have a final large payment called a balloon payment. Balloon payments can be dangerous. Often, borrowers with balloon payments cannot afford the large final payment when it comes due. If you don’t pay, the lender may have the right to repossess or foreclose on the property pledged as collateral for the loan—often a house. Unscrupulous lenders or their agents may assure you not to worry because you can refinance with them before the large payment is due. Usually, however, nothing in the documents guarantees you that right. If you have been misled in this way, see Chapters 3 and 19 for your options.

Many states prohibit balloon payments in loans for goods or services that are primarily for personal, family, or household use; others prohibit balloon payments on loans under a certain amount. Or they give borrowers the right to refinance these loans at the lender’s prevailing rate when the balloon payment comes due. In practice, many lenders let borrowers refinance balloon payments as long as the borrowers have decent credit at the time of the refinancing. Balloon payments are not allowed in high-cost or higher-priced mortgage loans. See “Extra Protections for High-Cost Loans” above.

Confession of Judgment

A confession of judgment is a provision that lets a lender automatically take a judgment against you if you default, without having to sue you in court. Confessions of judgment are prohibited in consumer contracts. Few lenders try to include one in their loans. The laws limiting confessions of judgment don't apply to real estate purchases, but state laws generally govern the procedures to collect on real estate mortgages.

Cosigner or Guarantor

If you didn't qualify for a loan on your own, a lender may have let you borrow money because you had a cosigner or guarantor. This person assumed full responsibility for paying back the loan if you didn't. This person may be called a cosigner, a guarantor, or some other name. The cosigner or guarantor need not benefit from the loan to be liable for it.

If you file for bankruptcy and the cosigner or guarantor is a relative or personal friend, it is possible that the person could be stuck with more than just what you haven't paid on the debt. If you made payments on the loan during the year before you filed for bankruptcy, the creditor you paid may have to turn over the payments you made during the year to the bankruptcy court to be distributed among all of your creditors. Then the creditor could seek to be repaid by your cosigner or guarantor. This is because your payments may be considered an "illegal preference" in bankruptcy. If this is a concern for you, speak to a bankruptcy lawyer.

Cosigner Notification

Federal law generally requires that cosigners (by whatever name they are described, including guarantor) be given the following notice.

NOTICE TO COSIGNER

You are being asked to guarantee this debt. Think carefully before you do so. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of *your* credit record.

Many young adults with no credit history have their parents cosign or guarantee loans.

Under the CARD Act, credit card companies cannot provide credit cards to consumers under 21 years of age unless they can prove they have their own source of income or they have a cosigner. The cosigner rule was added to help prevent

young people from getting into trouble with easy-to-get credit cards. Young people have racked up huge credit card debts they cannot pay back. The average credit card debt for undergraduate students has risen to \$3,173, according to statistics gathered by bankrate.com. And 82% of those students surveyed did not pay their balances in full each month, so they were also incurring interest charges. You may feel pressure to cosign for a minor who is a relative, but think carefully before signing. It may not be the best financial decision for the minor or for you.

Other borrowers, who may have had a serious financial setback (repossession, foreclosure, or bankruptcy) or simply don't earn enough to get a loan, ask a friend or relative to cosign or guarantee. Cosigners and guarantors should fully understand their obligations before they sign on.

Credit or Mortgage Insurance

Credit insurance guarantees payment of a debt if the borrower is unable to pay. It is sold by credit card companies, car dealers, finance companies, department stores, and other lenders who make loans for personal property.

Credit insurance, for the most part, is a rip-off. Consumers spend billions each year on credit insurance, often without knowing what they have bought. Or they may believe it is required, when it's not. Sometimes all it takes to purchase it is to check a box on the credit agreement. And the seller or creditor may have already checked the box, without your knowing it, before you sign the credit agreement. The insurance may have

limitations and exclusions so that in many instances when you might want insurance, you may not be covered anyway.

There are four main types of credit insurance:

- credit property insurance (insures against damage or loss to the collateral securing the loan)
- credit life insurance (ensures that the remaining debt on a loan or credit card account will be paid off if the consumer dies during the term of the coverage)
- credit disability/accident insurance (pays a limited number of monthly payments on a loan or credit card account if the borrower becomes disabled during the term of the coverage), and
- involuntary loss of income insurance (insures against layoff or other causes of involuntary loss of income).

Many lenders will tell you that credit insurance is required to get a loan. This is almost always wrong. For the most part, you cannot be required to buy credit insurance. The main exception is for credit property insurance: Creditors can require you to buy this type of credit insurance in certain circumstances. But even if property insurance is required, in most states, creditors cannot force you to buy the insurance from them. The creditor must allow you to shop around and buy from another company.

Federal and state laws regulate credit insurance. An important federal law applies to a kind of insurance called private mortgage insurance (PMI). Lenders sometimes require PMI if a purchase or refinancing loan is for more than 80% of the value of your home. It

ensures the lender will be paid if you default on the mortgage. After you have paid a certain amount of your loan, the law allows you to cancel the insurance. See Chapter 6 under “Cut Your Expenses” for details on when and how you can save money by canceling this insurance.

In a few states, lenders cannot require credit insurance except for loans to buy real estate.

Prepayment Penalties

Lenders make money on the interest they charge for lending money. If you pay off your loan early, they don’t make as much as they had anticipated. To make up some of the loss, some lenders impose prepayment penalties; if you repay the loan before it is due, you have to pay a penalty, usually a percentage of the balance you paid early. This makes it very expensive for you to refinance if you are having trouble making the payments or if you find a lower interest rate. When you are shopping for a loan, state that you want no prepayment penalty. Before you sign credit documents, ask the creditor to show you where it makes clear there is no prepayment penalty, then carefully check the documents you are asked to sign. Under some state laws, prepayment penalties are allowed only on larger loans, so creditors may try to get you to borrow more money than you need so they can include a prepayment penalty. Be suspicious if a creditor offers you more money than you really need. Anytime you have a choice, get a loan without a prepayment penalty.

Pyramiding Late Fees

If you’re late on a loan payment (such as a car loan or personal loan), the lender normally imposes a late fee. These fees are generally permitted unless the lender engages in an accounting practice known as pyramiding. Pyramiding takes place when the lender assesses a late fee that you don’t pay and then applies your regular payment first to the late fee and then to partially cover the payment due. You will never fully catch up on the payments due and the lender will therefore impose a late fee every month, even when you pay on time. For the most part, pyramiding is prohibited.

EXAMPLE: Sheila has a personal loan that requires her to pay \$100 each month by the 5th. On May 6, when her payment has not yet been received, the bank assesses a \$5 late fee. When the lender receives Sheila’s \$100 payment on May 17, it applies the first \$5 to cover the late fee and the remaining \$95 toward her \$100 payment. In June, Sheila is automatically assessed another late fee on the \$5 balance due for May, even though her June payment was on time. With this scheme, Sheila will always have a slight balance—and will continually be assessed a late fee.

If you find yourself being charged a late payment in the months after you make one payment late, immediately contact the creditor, and if you can’t resolve it with the creditor, complain. (See Chapter 3, “Complain in Writing.”)

Security Interest

When you take out a secured loan, you give the creditor the right to take your property that secures the loan, or a portion of the property if you don't pay. This is called a security interest. The two most common security interests are mortgages, where you give the lender the right to foreclose on your home if you miss payments, and car loans, where the lender can take the car if you default.

Some consumer loans, especially for large appliances and furniture, include a security interest in the item being purchased. Also, some personal loans that are not used to purchase a specific item—and, in fact, are often used to pay off other loans—include a security interest in your home, car, or important items around your house. These personal loans can be hazardous to borrowers. The interest is usually very high, and if you default, the lender can take the item identified in the contract.

To protect borrowers, lenders are generally prohibited from taking a security interest in the following, unless you use the loan or credit to buy the item: your clothing, furniture, appliances, linens, china, crockery, kitchenware, wedding ring, one radio, one television, and personal effects. Some states provide borrowers with additional protections and remedies.

Remember: You have three business days to cancel most loans secured by your principal residence. (See Chapter 3.)

Wage Assignment

If your loan or credit contract allowed creditors to collect past-due debts out of your wages, without having to get a court judgment, your creditors can collect much more easily. That kind of contract provision is called a wage assignment. Federal law and the law of some states prohibit creditors from including most wage assignments in consumer credit contracts. However, creditors can include a wage assignment in your contract if the contract allows you to revoke the wage assignment whenever you want. Or, a wage assignment may be allowed if, when you first got the loan, you set up a payment plan, with payments to be paid out of your salary. These laws limiting wage assignments don't apply to real estate purchases.

Some lenders, especially credit unions, ensure your repayment of a loan by such a wage assignment payment plan. This means that each time you are paid, your employer deducts a sum of money from your paycheck and sends it to the lender. This kind of wage assignment is legal. You may find this method of payment is overly intrusive and prefer to pay on your own. On the other hand, you may be able to get credit from your credit union this way, when you cannot get credit elsewhere.

Wage assignments are further limited in a number of states. (See “State Laws Limiting Wage Assignments in Consumer Loans,” below.) In many states, if you're married, your spouse must consent before the lender can take a voluntary wage assignment.

Additional State Protections for Security Interests

If your state isn’t listed here, check with your state’s department of consumer credit or consumer affairs to see if it offers similar protections. The dollar limits can change; check with your state’s consumer credit department to make sure you have the latest figures.

State and Statute	Restrictions on Security Interest for Consumer Loans	Restrictions on Security Interest in Real Estate for Consumer Credit Sales ¹	Restrictions on Security Interest in Personal Property for Consumer Credit Sales ²
California Civil Code §§ 1747.94, 1803.2(3), 1804.3, 2984.2, 1799.100	Anyone offering a secured credit card must prominently disclose that it is a “secured credit card” and that the credit extended is secured and must also describe the security by item or type.	When taking a security interest in a home, the loan contract must include a 14-point boldface warning: “If you sign this contract ... your home could be sold without your permission and without any court action if you miss any payment. ...”	Lien allowed on the motor vehicle that is the subject matter of the sale, or its insurance proceeds. An agreement in connection with a consumer credit contract incurred primarily for personal, family, or household purposes shall contain a statement of description signed by the consumer indicating each specific item (valued at less than \$1,000 per item) of the movable personal property in which the security interest is taken. This does not apply to vessels, vehicles, or aircraft. For household goods, it is unlawful for any person to take a security interest in connection with a consumer credit contract unless (1) the person takes possession of the household goods, or (2) the purchase price of the household goods was financed through the consumer credit contract or credit obligation.

¹ In a consumer credit sale, the security interest is taken in the land to which the goods sold are attached or that is maintained, repaired, or improved by the goods or service.

² In a consumer credit sale, the security interest is taken in the personal property upon which services are performed or to which goods purchased are installed or annexed.

Additional State Protections for Security Interests (continued)

State and Statute	Restrictions on Security Interest for Consumer Loans	Restrictions on Security Interest in Real Estate for Consumer Credit Sales ¹	Restrictions on Security Interest in Personal Property for Consumer Credit Sales ²
Colorado Colo. Rev. Stat. §§ 5-3-201, 5-3-204	To take an interest in real estate, amount financed must be over \$3,000.	Amount financed must be \$3,000 or more.	Amount financed must be \$1,000 or more.
Indiana Ind. Code Ann. §§ 24-4.5-2-407, 24-4.5-3-510	To take an interest in real estate, amount financed must be over \$3,500.	Amount financed must be \$3,500 or more.	Amount financed must be \$1,050 or more.
Iowa Iowa Code §§ 537.2307, 537.3301	To take an interest in real estate, amount financed must be over \$2,000, and finance charge cannot exceed 15%.	Amount financed must be \$1,000 or more.	Amount financed must be \$300 or more; if security is in household goods or motor vehicle used as transportation to and from work, amount financed must be \$100 or more.
Kansas Kan. Stat. Ann. §§ 16a-2-307, 16a-3-301	To take an interest in real estate, amount financed must be more than \$3,000, and finance charge cannot exceed 12%.	Amount financed must be \$3,000 or more.	Amount financed must be \$900 or more.
Maine Me. Rev. Stat. Ann. tit. 9-A, §§ 2-307, 3-301	To take an interest in real estate, amount financed must be over \$2,800. May not take interest in a personal residence if APR is over 18%.	Amount financed must be \$2,800 or more.	Amount financed must be \$1,000 or more.

¹ In a consumer credit sale, the security interest is taken in the land to which the goods sold are attached or that is maintained, repaired, or improved by the goods or service.

² In a consumer credit sale, the security interest is taken in the personal property upon which services are performed or to which goods purchased are installed or annexed.

Additional State Protections for Security Interests (continued)

State and Statute	Restrictions on Security Interest for Consumer Loans	Restrictions on Security Interest in Real Estate for Consumer Credit Sales ¹	Restrictions on Security Interest in Personal Property for Consumer Credit Sales ²
North Carolina N.C. Gen. Stat. § 25A-23		Amount financed must be \$1,000 or more.	Amount financed must be \$300 or more; in motor vehicle to which repairs are made, amount financed must be \$100 or more.
Oklahoma Okla. Stat. Ann. tit. 14-A, § 2-407		Amount financed must be \$4,500 or more.	Amount financed must be \$900 or more.
South Carolina S.C. Code Ann. § 37-2-407		Amount financed must be \$3,400 or more.	Amount financed must be \$1,020 or more.
Virginia Va. Code Ann. § 6.2-1524	Can't take security interest in real estate for most consumer loans.		
West Virginia W.Va. Code § 46A-4-109	Can't take security interest in land for consumer loan of \$2,000 or less, unless the loan is made by a licensed consumer lender or FDIC financial institution.		If security is in household goods not prohibited by federal law, agreement must be signed by both husband and wife, if the borrower is married.
Wisconsin Wis. Stat. Ann. § 422.417		Amount financed must be \$1,000 or more.	Amount financed must be \$500 or more.
Wyoming Wyo. Stat. § 40-14-241		Amount financed must be \$1,000 or more.	Amount financed must be \$300 or more.

¹ In a consumer credit sale, the security interest is taken in the land to which the goods sold are attached or that is maintained, repaired, or improved by the goods or service.

² In a consumer credit sale, the security interest is taken in the personal property upon which services are performed or to which goods purchased are installed or annexed.

State Laws Limiting Wage Assignments in Consumer Loans

Here are additional consumer protections enacted by many states. If your state is not listed, check with your department of consumer credit or consumer affairs to see if there are similar laws or regulations in your state.

State and Statute	Spouse's Consent Is Required	Limit on the Amount of Wages That Can Be Deducted	Wage Assignment Must Be Notarized
Arkansas Ark. Code Ann. § 11-4-101(b)	Yes		
California Cal. Lab. Code § 300	Yes	50%	Yes
Colorado Colo. Rev. Stat. § 8-9-104	Yes		Yes
Illinois 740 Ill. Comp. Stat. § 170/4		The lesser of 15% of gross weekly salary, or the amount by which net weekly wages exceed 45 times the federal or Illinois minimum hourly wage (computed using whichever minimum wage is greater)	
Indiana Ind. Code Ann. § 22-2-7-4	Yes		Yes
Iowa Iowa Code § 539.4	Yes		
Kentucky Ky. Rev. Stat. Ann. § 286.4–570		10%	
Maryland¹ Md. Code Ann. (Com. Law) § 15-302	Yes		Yes
Massachusetts² Mass. Gen. Laws ch. 154, § 3	Yes	25%	Yes
Minnesota Minn. Stat. Ann. §§ 56.17, 181.07	Yes	10%	
Montana Mont. Code Ann. §§ 31-1-306, 32-5-310	Yes	10%	Yes

¹ In Maryland, a wage assignment may not remain in effect for more than six months.

² In Massachusetts, a wage assignment may not remain in effect for more than two years.

State Laws Limiting Wage Assignments in Consumer Loans (continued)

State and Statute	Spouse's Consent Is Required	Limit on the Amount of Wages That Can Be Deducted	Wage Assignment Must Be Notarized
Nebraska Neb. Rev. Stat. §§ 36-213, 25-1558, 45-1030	Yes	25% net weekly wages (15% for the head of a family), or the amount by which net weekly earnings exceed 30 times the federal minimum hourly wage, whichever is less	Yes
New Mexico N.M. Stat. Ann. § 14-13-11		25%	Yes
Ohio Ohio Rev. Code Ann. § 1321.31	Yes	25% if married; 50% if unmarried	
Oklahoma Okla. Stat. Ann. tit. 14A, § 3-403	Wage assignment is not allowed on most consumer loans.		
Oregon Or. Rev. Stat. § 83.150	Wage assignment is not allowed for retail installment contracts or retail charge accounts.		
Pennsylvania 43 Pa. Cons. Stat. § 274	Yes		
Rhode Island R.I. Gen. Laws § 19-14.1-7	Yes (for household furniture in the borrower's possession)		
Virginia Va. Code Ann. § 6.2-1526	Yes	10%	
Washington Wash. Rev. Code Ann. § 49.48.100	Yes		
West Virginia³ W.Va. Code §§ 46A-4-109(2), 46A-2-116		25% net weekly earnings	
Wisconsin Wis. Stat. Ann. §§ 422.404, 241.09	Yes, plus signature of two disinterested witnesses		
Wyoming Wyo. Stat. § 27-4-111	Yes		

³ Wage assignments are not allowed on consumer loans made by regulated lenders.

Waivers of Exemptions

If a creditor sues you and gets a court judgment, or you file for bankruptcy, some of your property is protected from your creditors—that is, it can't be taken to pay what you owe. This property is called exempt property. It usually includes your clothing and personal effects, household goods, and some of the equity in your home and car. (See Chapter 16.)

Some creditors try to get around the laws that let you keep exempt property by including a provision in a loan agreement whereby you waive your right to keep your exempt property. These provisions are prohibited in most non-real-estate consumer contracts.

Mandatory Arbitration

Your right to a jury trial in federal court to decide most disputes about loans or other credit is protected by the Seventh Amendment to the Constitution. Your state constitution secures that right in state courts. The idea behind these protections is that consumers thought they would get a fairer decision from a jury of ordinary people, like themselves, than from a single judge. But consumers can give up that right, and often do, when they sign a consumer contract.

More and more, businesses include a mandatory arbitration clause in many types of consumer contracts, including contracts for employment, credit, insurance, and even for doctors' services and hospital admission. These clauses require you to waive your right to a jury and even your right to go to court to resolve disputes.

Instead, you must resolve any dispute by way of a private, and often costly, arbitration system usually selected by the business. In an example of how this may turn out for consumers, one arbitration company reportedly decided in favor of the credit card company in 18,045 cases out of 18,075, deciding for the consumer in only 30 cases. In arbitration, you also have less ability to find out information from the company that you may need to prove your case, and you may not be able to appeal the decision, even if the arbitrator made a serious mistake about the law. On the other hand, you may be able to get a decision sooner, at less expense. Consumer advocates warn that arbitration clauses often disadvantage consumers.

Watch out for these clauses when you sign contracts. Sometimes the arbitration agreement is separate and sometimes it is hidden among the many paragraphs in a contract.

Sometimes the arbitration paragraph gives you a choice to avoid the arbitration clause, but you may have to write a separate letter saying you don't agree to the arbitration clause. If you don't want to agree to arbitration, be sure to send a letter saying so.

If the agreement doesn't give you that choice, you can also tell the person you are dealing with that you don't want arbitration. Sometimes they will not require you to agree to it.

Sometimes you don't have a choice. If you want the product or service, you have to sign a contract agreeing to the arbitration clause. If that is the case, you may want to write just above where you have to sign: "I don't want arbitration, but I was told I could not receive

the *[product or service]* unless I signed agreeing to arbitration.” Making it clear you did not want arbitration, but had no choice, may be helpful if there is a dispute later, and you or your attorney tries to prevent enforcement of the arbitration part of the contract.

Voluntary mediation and arbitration, on the other hand, can be helpful. (See Chapters 3 and 14.) These programs allow you to

sue in court if you cannot resolve a dispute outside of court or if you don’t like the arbitration or mediation result.



SEE AN EXPERT

More on mandatory arbitration agreements. These websites may help: Public Citizen, www.citizen.org, Trial Lawyers for Public Justice, www.tlpj.org, or the National Consumer Law Center, www.nclc.org.



Student Loans

What Kind of Loan Do You Have?	231
Federal Student Loans	231
Private Loans	232
State Loans	233
Figuring Out Who Holds Your Student Loan	233
Canceling Your Loan	234
School Closure	234
False Certification	235
Unpaid Refunds	235
Permanent Disability	236
Death	236
Participation in a Volunteer Program, Teaching Program, Military Service, or Other Public Service	237
Postponing Payments	237
Deferments	237
Forbearances	238
Repaying Student Loans	238
Repayment Plans	238
Loan Consolidation	240
Getting Out of Default	242
Filing for Bankruptcy When You Can't Pay	244
Consequences of Ignoring Student Loan Debt	245
Where to Go for Help	245

“Education is our passport to the future, for tomorrow belongs to the people who prepare for it today.”

—Malcolm X,
1925–1965

With the cost of education skyrocketing, it’s not surprising that student loan borrowing is on the rise. Most graduates these days face not only an uncertain economic future, but also mountains of student loan debt.

Because the government guarantees or provides most student loans, it is the government that will ultimately try to collect if you don’t pay. This is significant, because the government can use far more aggressive collection tactics than private collectors. Among other things, the government can take your tax refund and garnish your wages without first getting a court judgment. And there’s no time limit for collecting on student loans. The government can keep coming after you ten, 20, or even 30 years after you graduate.

Although you may want to throw this book across the room and try to forget that you owe thousands of dollars in student loans, denial is not the best strategy. The good news is that there are lots of options available for paying back student loans. And if you went to a school that closed or falsely certified your eligibility for a loan (which was more likely to happen at private, for-profit schools, like trade schools or non-traditional colleges, than other schools), you may be able to get your student loan debt canceled.

Borrowing Is on the Rise

Total outstanding student loan debt is now close to \$830 billion, greater than the total outstanding credit card debt, which is about \$826 billion. The average graduate with a Bachelor’s degree now borrows more than \$23,000. According to the 2007–2008 National Postsecondary Student Aid Study (NPSAS), approximately 66% of students graduating in 2007–2008 had student loan debt—up from approximately 42% in the early 1990s. A quarter of undergraduates borrowed \$25,000 or more, and 10% graduated with nearly \$40,000 in debt.

At for-profit colleges, the numbers borrowing and their debt levels are even higher. In 2008, about 96% of Bachelor’s graduates in for-profit schools had student loans, with an average debt of over \$33,000. Although only about 10% of students go to for-profit schools, they make up about 44% of those who defaulted on student loans within two years of graduation.

Graduate students incurred \$30,000 to \$120,000 of debt, while law and medical school students ran up debt of \$80,000 to \$127,000. Nearly half of the people who attended professional schools, such as law or medical school, had student loan debt that exceeded their annual incomes.

A 2002 survey by the State Public Interest Research Groups found that about 39% of student borrowers graduated with unmanageable levels of debt. The percentage is much higher for lower-income students and for African American and Latino students.

This chapter reviews the basic types of government student loans and ways to repay, defer, or cancel them.

What Kind of Loan Do You Have?

The first step to managing your student loan debt is understanding what types of loans you have. Many repayment options and other programs are available for only certain types of loans, so you need to know which type you have. This section covers the most common ones.

Federal Student Loans

In the past, most student loans were provided by private lenders and guaranteed by a guarantee agency and then by the federal government—these are called Federal Family Education Loans (FFELs). The “guarantee” means that the government will reimburse your lender if you default, and can then go after you to collect on the loan. In 1993, the federal government began providing loans directly to students—called Direct loans. As of July 2010, FFELs are no longer available to students. However, if you (like many Americans), took out a student loan prior to July 2010, you very well may have a FFEL. Through these and other programs, the federal government provides about 70% of all student aid.

Here are the details of FFELs, Direct loans, and other common federal loans.

Federal Family Education Loans (FFELs)

FFELs may be one of the following:

- Stafford loans, (previously called Guaranteed Student Loans or GSLs or Federal Insured Student Loans (FISLs))
- PLUS loans (loans to parents or to graduate students)
- SLS loans, or
- consolidation loans.

Stafford loans are the most common; they help pay for college or graduate school education. These loans have been around in one form or another since the 1960s. If a student qualifies for a “subsidized” Stafford, the student does not have to pay any interest on the loan for the time the student is in school or after leaving school, in the grace period.

As of July 2010, FFEL loans are no longer available. So, if you got your loans after June 30, 2010, they are not FFEL loans.

Direct Loans

Direct loans were first made available in about 1993. These loans are made directly by the federal government, rather than by a bank or other lender. Direct loans may be a:

- Stafford loan
- PLUS loan, or
- a consolidation loan.

Direct loans have had a more favorable repayment option than FFELs for students who do not have sufficient income to pay the standard payments. But as of July 2009, both types of loans will have similar flexible repayment plans available.

Most existing federal loans are either FFELs or Direct loans. (As mentioned above, loans made after June 30, 2010 cannot be FFELs.)

Perkins Loans

A Perkins loan is a low-interest loan for undergraduate or graduate students with very low incomes. These loans were previously known as National Direct Student Loans, and before that, National Defense Student Loans. The federal government guarantees repayment of Perkins loans but, unlike other loans, Perkins loans are made by the school with a combination of federal and school funds. This means that the school, not a bank or the government, is the lender.

PLUS Loans

These loans are available to creditworthy parents and graduate and professional students. These loans are either federally guaranteed or direct federal loans.

Other Federal Loans

There are many other types of federal loans, including loans for independent students, professionals, and nursing students. To find out more, contact your lender or the Federal Student Aid Information Center at <http://studentaid.ed.gov>, 800-443-3243, or 800-730-8913 (TDD).

The Center offers a free booklet, “Funding Education Beyond High School: The Guide to Federal Financial Aid,” that explains many of the basic terms and rules governing federal loans.

Private Loans

Many students have private loans from banks and other financial institutions without the

guarantee of the federal government. Their terms are usually much less favorable than federal direct or federally guaranteed loans. Many graduate students and some undergraduates apply for federally guaranteed loans and private loans in one application package, but the private loans don't have all of the options for repayment that government guaranteed or direct loans have.

Many loans are made by the Student Loan Marketing Association (Sallie Mae) or by Nellie Mae, its subsidiary. For more information on these loans, contact either company at 888-272-5543 or 888-833-7562 (TDD) or Sallie Mae at www.salliemae.com and Nellie Mae at 800-367-8848 or www.nelliemae.com.

For a list of other lenders making private student loans, go to FinAid's website, at www.finaid.org/loans, click on “loans,” then follow the link to private student loans to find a table comparing the different lenders.



CAUTION

Private loans are usually more expensive and have harsher repayment terms than the others described here. You should not get a private loan unless you have received all the government grants and federal direct or guaranteed loans available. Some schools may not tell you about all the federal grants and loans for which you are eligible before trying to steer you to a more expensive private loan. Private loans may also have names, such as “signature loan,” that do not clearly distinguish them from government loan programs.

Student Loan Terminology

A **guaranty agency** is a state or private nonprofit company that insured your loans and pays the holder if you default.

The **holder** owns your loan or was hired by the owner to service it (that is, collect and process payments). Your loan holder may be your lender or a company that has purchased your loan from the lender. If you're in default, the holder will be a guaranty agency, the Department of Education, or a collection agency working for the Department.

The **lender** is the institution from which you obtained your loan. This may be a bank, a savings and loan, a credit union, your school, or the federal government.

State Loans

Many states have their own student loan programs. To find out about these programs, contact your state department of higher education or state guaranty agency. The Department of Education's website has contact information for each state guaranty agency, at www.ed.gov (at the bottom of the page, under "Resources and Statistics," click on "State Information," then choose your state. Under "Contacts," click on "Organizations Offering Information or Services," then click on "State Higher Education Agency," and look for a listing for the state agency in charge of financial aid.)

Figuring Out Who Holds Your Student Loan

If you want to set up a repayment plan, postpone payments, consolidate your loans, cancel a loan, or apply for some other government program, you need to know both what type of loan you have and who holds your loan. If you're in default, you've probably heard from the holder, because it's trying to collect the loan. If you're not in default, it's often more difficult to find out who holds your loan. Try these sources:

- The National Student Loan Data System (www.nslds.ed.gov). This is the Department of Education's central database for student aid. You can get information about what kind of loan you have, as well as loan or grant amounts, outstanding balances, loan status, and disbursements. Identification information is required to access the database, including a personal identification number (PIN) that you can obtain online. You can also access the database by calling the Federal Student Aid Information Center (just below).
- For help accessing the National Student Loan Data System and to find information about the holder of your loan, as well as information on loans not in default, call the Department of Education's Federal Student Aid Information Center at 800-433-3243 or 800-730-8913 (TDD).
- For loans in default, call the Department of Education's FSA Collections Office at 800-621-3115 or 800-730-8913 (TDD).

Department representatives are trained to assist borrowers in default. Or, go to www2.ed.gov/offices/OSFAP/DCS/index.html.

If you've tried all of these places and are still having trouble, consider contacting the Student Loan Ombudsman office at 877-557-2575 or www.ombudsman.ed.gov. (See "Where to Go for Help," below, for more information on the ombudsman office.)

Canceling Your Loan

If you qualify for cancellation (also known as discharge), it is always your best option. It may completely wipe out the loan balance and allow you to get reimbursement for any payments you have made or that have been taken from you through tax intercepts or wage garnishments, or it may eliminate some or all further payments.

Certain types of discharges treat the loan as if you never owed it (for example, closed school and false certification discharges) and wipe out all negative references in your credit report. If only a portion of your debt is wiped out due to the school's failure to pay a required refund on your loan, your credit report must state that a portion of the loan was discharged.

Below are several ways to cancel your loan. The first three—cancellation due to school closure, false certification, and unpaid refunds—are most likely to apply to students who attended private, for-profit schools. These schools typically offer vocational courses, degrees, or online courses.

In 2010, a number of news articles, testimony before a Senate committee, and a GAO report highlighted some of the ways that some for-profit schools are misleading and defrauding students. To see the GAO's secret shopper videos showing schools misleading prospective students or refusing to provide them with information about financial aid until they signed enrollment agreements, go to www.gao.gov/products/GAO-10-948T. If a school misled you, you may have a basis to sue or defend against collection actions, but only the types of conduct explained below qualify you to have your loan canceled without a lawsuit.

School Closure

Many former students were lulled into taking out student loans to attend a school with glowing descriptions of future careers and high salaries, only to have the school deteriorate or close before they could finish the program. You can cancel a FFEL, Direct, or Perkins loan (including an NDSL loan) if you received any of the loan proceeds after January 1, 1986, as well as the portion of a consolidation loan used to pay off any of these loans if you were unable to complete the program because the school closed:

- before you began attending classes
- while you were enrolled and attending classes (and you were not able to complete your studies)
- within 90 days after you withdrew from the school, or
- more than 90 days after you withdrew, and the Department of Education

determined there were extenuating circumstances to justify an extension of the 90-day period.

The Department of Education has a list of closed schools. Go to its general financial aid website at <http://studentaid.ed.gov>, click on “Repayment Information,” scroll down and click on “Loan Cancellation (Discharge).” That page describes the different types of discharges available, including “closed school,” and how to apply for a discharge. To find the list of closed schools and the dates closed, go directly to <http://wdcrobcolp01.ed.gov/CFAPPS/FSA/closedschool/searchpage.cfm>.

In most circumstances, your school must be on the list in order to qualify for a closed school cancellation. The list may not be entirely accurate. If you have information that can show a school closed earlier than the date indicated in the list, you should provide it. See the Resource icon, below, for further information and to get an application form to claim a closed school discharge.

False Certification

If the school did not make sure that you were qualified to attend the program, you may be able to cancel your loans based on “false certification.” This program applies to FFEL or Direct loans if you received any of the loan proceeds after January 1, 1986, as well as the portion of a consolidation loan used to pay off one of these loans. (If you had a Perkins loan, you may have other grounds to have the loan canceled, but will need to contact an attorney familiar with

the intricacies of student loan law for help.) Typically, the grounds for false certification are any of the following:

- You did not have a high school diploma or GED at the time of admission, and the school did not properly test your ability to benefit from the program (for example, the school did not properly time its entrance exam, did not properly score it, did not use an exam relevant to the course, did not use an approved exam, or improperly assisted you to pass the exam).
- At the time of enrollment, you could not meet the licensing requirements for employment in the field for which you were to receive training because of physical or mental condition, age, criminal record, or other reason the Department of Education accepts (for example, you had a felony record and enrolled in a security guard course, but your state doesn’t permit prior felons to work as security guards).
- The school forged your signature on the loan papers or checks, unless the loan proceeds paid for charges you owed to the school.
- You are a victim of the crime of identity theft (shown by a verdict or judgment).

See the Resource icon, below, for further information and to get an application form for a false certification discharge.

Unpaid Refunds

This program allows you to cancel all or a portion of a loan if the school failed to

pay you a refund that it owed you because you never attended the school or withdrew from the school and were owed a refund for the time left in the program. Loans must be GSL, Stafford, SLS, PLUS loans, or Direct loans, or the portion of a consolidation loan used to pay off one of these loans and must have been made after January 1, 1986. (If you had a Perkins loan, you may have other grounds to have the loan canceled, but will need to contact an attorney familiar with the intricacies of student loan law for help.) In addition, some states have funds to reimburse students who didn't get refunds due them.

Permanent Disability

You can cancel any federal loan if you are unable to work because of an illness or injury that is expected to continue for five or more years or result in your death. In most cases, to qualify for this cancellation, you cannot have had the injury or illness at the time you signed up for the loan. If you did have the disability at the time you got the loan, you might be able to cancel your loans if you can show substantial deterioration of your condition.

To qualify, you will need to get a statement from your treating physician on a form provided by the holder of your loan. To find out who holds your loans, check the National Student Loan Data System, www.nslds.ed.gov. Once you have the lender's form, get your doctor's statement, and then submit the application within 90 days to the holder of your loan.

If the lender and guaranty agency approve the discharge claim, the guaranty agency must assign the loan to the Department of Education. If your documentation proves to the Department that you are permanently and totally disabled, you will be discharged from making further payments, beginning from the date your doctor certified your eligibility. During any of the next three years, if you earn over 100% of the poverty guideline for a family of two, or if you get certain educational grants or a new Direct or Perkins loan, your discharge will be revoked and your loan debt reinstated.

(For 2009, the poverty line was \$14,570 in the contiguous United States. To see the values for Alaska and Hawaii, and for updates to poverty line numbers, visit <http://aspe.hhs.gov/poverty/poverty.shtml>.)

Parents who took out PLUS loans together cannot both get disability cancellations unless both are disabled. If only one parent is disabled and both parents took out the loan, the nondisabled parent is still obligated to pay.

Death

A student's death wipes out any outstanding amount owed on student loans (including PLUS loans). If the loan has been consolidated with a spouse's student loans, this discharge wipes out only the portion owed by the spouse who died. If both parents signed for a PLUS loan, the death of one does not wipe out the remaining debt.

Participation in a Volunteer Program, Teaching Program, Military Service, or Other Public Service

Different federal loans have different cancellation programs that apply if you are engaged in a particular type of work, such as volunteering for the Peace Corps, teaching needy populations, serving in the military, or providing other public service. Some programs allow you to postpone payments on your loans only while you are engaged in the service; others allow you to cancel all or a portion of the loan. For information about these programs, go to <http://financialaid.ed.gov>, scroll down to to “Repaying Your Loans,” click on “Repayment Information,” and scroll down to find links to the various cancellation programs. Also check with your college counseling department—some colleges have their own loan cancellation programs for students employed in public service.



RESOURCE

To discharge or cancel a student loan—or to determine whether you qualify to do so—call the holder of your loan or the Department of Education’s FSA Collection Office at 800-621-3115. Be aware that your loan holder may not inform you of all the options available to you. For this reason, it pays to first learn about your options. For more information on loan cancellation (discharge), go to www.studentaid.ed.gov, and under “Repaying Your Loans,” click on “Repayment Information,” then scroll down and click on “Loan Cancellation (Discharge)” for school-related discharges, or for teacher or public service discharges, click on those

topics. For forms, go directly to www.ed.gov/offices/OSFAP/DCS/forms.html.

Postponing Payments

If you don’t qualify to have your loan discharged, and you can’t afford to make any payments right now, you may be able to postpone student loan payments through either a deferment or a forbearance.

Deferments

Each type of federal loan program has different rules that allow you to postpone paying your loan in certain circumstances. These postponements are called “deferments.” If you get a deferment, you will still have to pay the loan back at some point, but you can wait a while. Most important, interest will not accrue on subsidized loans during the deferment period. Deferments are available only if you aren’t more than 270 days (about nine months) behind when you apply for a deferment (or more than six months behind when you apply for an unemployment deferment on a FFEL) and you meet the specific criteria for your type of loan.

This section lists deferments only for loans disbursed after July 1, 1993. If you have direct loans disbursed at an earlier date, you can get more information by contacting the Direct Loan Servicing Center at 800-848-0979 or at 800-848-0983 (TTY), or online at www.dl.ed.gov. If you have a FFEL loan disbursed before that date, contact your loan holder.

The most common deferments are available if you are:

- enrolled in school at least half-time
- unemployed and seeking employment
- suffering an economic hardship
- serving in the military on active duty during a war, other military operation, or national emergency, or performing qualifying National Guard duty during a war, other military operation, or national emergency, and up to 180 days afterward
- called to service while enrolled in school or were enrolled within six months before being called up (the deferment continues for 13 months after the military duty ends), or
- serving in the Peace Corps.

Application forms for all deferments for Direct loans are available from the Department of Education, Federal Student Aid website at www.dl.ed.gov. Click on “Site Map” and under “Forms” select a deferment to review its requirements and to get an application form.

Forbearances

If you don’t qualify for a deferment but are facing hard times, your loan holder may still allow you to postpone payment on your loans or temporarily reduce your payments. An arrangement of this sort is called a forbearance. You may be able to get a forbearance even if your loans are in default.

Forbearances are less attractive than deferments because interest continues to accrue when you are not making payments. But if you can’t make your loan payments, a forbearance will at least keep you out of default. In the long run, the cost of default

is much higher than the interest that accrues during a forbearance. And if your loans are in default, the holder may, but is not required to, stop collection efforts on past-due amounts while you are in forbearance. Even if you can’t get a forbearance on all of your loans, a forbearance on some of them may give you enough breathing room to catch up financially.



RESOURCE

Further information on deferment and forbearance are available from the Department of Education through the links at studentaid.ed.gov. Go to the site map and scroll down to “Repaying Your Loans,” and click on “Postponing Repayment,” or go directly to <http://studentaid.ed.gov/PORTALWebApp/students/english/difficulty.jsp>.

Repaying Student Loans

If you don’t qualify to have your loan canceled or for a deferment (in which interest doesn’t continue to accumulate), before you decide on the forbearance alternative, check out the variety of repayment alternatives available. Some of these plans apply only if you’re not in default. Other repayment plans were created specifically to help you get out of default.

Repayment Plans

There are many flexible options for repaying federal loans. The options are more limited for private loans. This section focuses on

federally guaranteed or Direct loans only. If you have a private loan, you should contact your loan holder for more information about repayment plans.

Standard plan. This is the basic payment plan for federal loans. These plans carry the highest monthly payments but cost less in the long run because you pay less interest. Most borrowers either choose this plan or end up with it because they fail to choose something else. In most cases, a standard plan requires that you pay at least \$50 per month and repay your student loans in ten years.

Graduated plan. In a graduated plan, you also pay the loan off in ten years, but payments start out low and increase every two years. This may be your best option if you are just starting a career or business and your income is low but likely to increase over time.

Extended repayment plan. This plan allows a student with over \$30,000 in principal and interest debt in either FFEL or Direct loans who is starting repayment after July 1, 2006, to stretch payments over a longer period of time, up to 25 years. Your monthly payments will be lower, but you'll pay more interest over the long term.

Plans if the regular payment plan causes hardship. There are other plans available for low and moderate income borrowers and those who have high student loan debts. You may be eligible for these plans even if your financial difficulties are only temporary. Before 2009, the two options available were the Income Contingent Repayment Plan (ICRP) for Direct Loans and the Income Sensitive Repayment Plan (ISRP)

for FFEL loans. Beginning July 1, 2009, a third option became available—the Income Based Repayment Plan (IBRP). Because the IBRP has more favorable terms, this is the plan that is most likely to benefit you. All three plans require you to submit financial information annually to the loan holder. The lender will adjust payments according to your financial circumstances.

Under the Income Contingent Repayment Plan (ICRP), your monthly payments can be as low as \$5 or even \$0. Because the low monthly payments often don't pay even the accruing interest, you won't make a dent in the principal balance. You must renew the plan every year, and the monthly payment amount will change if your financial circumstances change. If you make payments pursuant to an ICRP plan for 25 years (even if the plan calls for \$0 payments, the government will cancel the remaining balance.



CAUTION

You may owe taxes if the government cancels your loan. If a government agency cancels the balance of your loan, you may owe income tax on the amount canceled. For more on this, see Chapter 5.

Under the Income Sensitive Repayment Plan, you pay a monthly amount that is affordable for you, based on your annual income, family size, and total loan amount. However, unlike an ICRP, the monthly payments must at least cover accruing interest. This plan must be renewed every year, the monthly payment changes if your

financial circumstances change, and the loan must be paid off over ten years.

The Income Based Repayment program provides a more flexible repayment option for both FFELs and Direct loans, including the elimination of any remaining debt after 25 years of payment and payments for even less than the interest accruing. Payments under the IBR may be lower than under either the ISRP or the ICRP, and can be as low as \$0. IBR is not available for parent PLUS loans or Perkins loans. And you cannot be in default when you apply for an IBR plan.

Perkins loans have a different repayment option for borrowers suffering hardships. They require minimum monthly payments of at least \$40 (for new borrowers after October 1, 1992), but allow the school to extend the ten-year payment period another ten years and allow additional extensions for prolonged unemployment or illness. Alternatively, if you have both a Perkins loan and a FFEL or Direct loan, you can pay them under the IBR plan if you first consolidate the Perkins loan into a Direct or FFEL consolidation loan.

You can find calculators to see what your payments would be under the IBR or the ICRP at <http://studentaid.ed.gov>. For information on the ISRP, contact the holder of your loan.

Loan Consolidation

Consolidation is a good option if you are having trouble paying your loans. You can “consolidate” just one loan, or several loans. You can consolidate loans even if you’re already in default. In fact, consolidation is

one good way to get out of default. (See “Getting Out of Default,” below, for more information.)

A consolidation loan allows you to combine your federal student loans into a single loan with one monthly payment. This may be a good option if any of the following are true:

- You can’t afford the monthly payments on your federal student loans under any of the options described in “Repayment Plans,” above, and don’t qualify for a postponement or for loan cancellation.
- You qualify for some of the payment plans described in “Repayment Plans,” above, but you are so deep in debt that you still can’t afford your monthly payments.
- You can afford your monthly payments and intend to pay off your loans under a standard plan, but you want to refinance at a lower interest rate.
- You are in default on one or more of your student loans and want to get out of default.

The vast majority of federal loans are eligible for consolidation, including subsidized and unsubsidized Stafford loans (GSLs), Direct loans, Supplemental Loans for Students (SLSSs), Perkins loans, FISLs, and (except in an IBR Plan Consolidation Loan) PLUS Loans. All borrowers with these loans are eligible to consolidate after they graduate, leave school, or drop below half-time enrollment. And, until July 1, 2011, in some cases you can get a consolidation loan even before you leave school. However, because consolidation loans have no grace period while you are in school

or for the six months afterwards (unlike nonconsolidation loans, which usually do have a grace period during this time), getting a such a loan may not be a good idea.

However, there are some restrictions. Private student loans cannot be included in a federal consolidation loan. In addition, spouses cannot consolidate their loans into a single consolidation loan. And, borrowers who are in default must meet certain requirements before they can consolidate.

Consider both the advantages and disadvantages of consolidation before obtaining a consolidation loan. Potential disadvantages include the possibility that, if you have old loans, consolidation will cause your interest rate to go up. Moreover, consolidation will extend the repayment period, which means that you will pay more interest over the life of your loan. Consolidation will not completely clean up your credit report, either. If you were in default, your report will reflect that your previous loans were in default but are now paid in full through the new loan.

Loan consolidation offers some potential advantages, too. If you are in default on any of your government loans, consolidation may offer the opportunity to get out of default and make affordable monthly payments. When interest rates are low, consolidation gives you the advantage of locking in a low rate on your student loans.

Direct Consolidation Loan Program

As with the Direct Loan Program, the federal government provides Direct Consolidation Loans.

Direct Consolidation Loans come with flexible repayment options, including a standard plan, a graduated plan, and an extended plan, and in most circumstances an Income Contingent Repayment Plan (ICRP) or an Income Based Repayment Plan (IBR) (see “Repayment Plans,” above). If you are in default, a Direct Consolidation Loan is a good way to get out of default and obtain a repayment plan that you can afford. In order to get out of default through a Direct Consolidation Loan, you must make three affordable monthly payments to the loan holder first (which can be as low as \$5) or agree to an ICRP or IBR on the consolidated loan. Borrowers are also eligible for deferments in certain circumstances.

Each loan consolidated under the program keeps its interest subsidy benefit. This can be important if you return to school.

To qualify for a Direct Consolidation Loan, you must have at least one Direct loan or FFEL. So, if you have only a Perkins loan, for example, you don’t qualify. If you have at least one FFEL, but no Direct loans, then you must certify you are unable to obtain a FFEL with an Income Sensitive Repayment Plan “acceptable” to you and are eligible for an Income Contingent Repayment Plan (see “Repayment Plans,” above). As of 2010, there are no more FFEL Consolidation loans available, so the requirement that you cannot get one may be moot.

If you are confused about whether you are eligible for a Direct Consolidation Loan, or are interested in applying, you should contact the Department of Education’s Direct Loan Origination Center’s Consolidation Department at 800-557-7392, (TTY) 800-557-7392,

or visit www.loanconsolidation.ed.gov. The Department also offers an online calculator that estimates your monthly payments under a Direct Consolidation Loan (see www.ed.gov/DirectLoan/calc.html).

One other point to consider before you apply for a consolidation loan: Your right to assert a school-related claim against the lender of the consolidation loan is not clear. That right might be important, for example, if you got a loan to attend a for-profit school because it lied about the likelihood of you getting a job after graduation. If you think you have a claim against the school, it is better to consult an attorney experienced in bringing these kinds of cases before you consolidate your loan.

For more information on Direct Consolidation Loans and to get an application for loan consolidation, go to <http://loanconsolidation.ed.gov/index.html>.

Reconsolidation

The circumstances under which you can consolidate a loan or loans that have already been consolidated are limited. Here are some examples:

- If you apply within 180 days after you get a consolidation loan, you can add another loan (either a new or existing loan) into that consolidation loan.
- You can get a new consolidation loan to combine an existing consolidation loan and another student loan you got either before or after you got the original consolidation loan.
- You can consolidate two existing consolidation loans.

- FFEL Consolidation Loan borrowers may also convert a FFEL Consolidation Loan into a Direct Consolidation Loan, without having to add any additional loan, in order to obtain an Income Contingent or Income Based Repayment Plan, but only if the lender submitted the loan to the guaranty agency to help the borrower avoid default.



CAUTION

Not all companies offering consolidation loans are legitimate. Some will just charge their fees to your credit card before they disappear. Others will pay only a few of your creditors, or not pay your creditors on time. Additionally, some private lenders offer consolidation loans that may sound like federally insured or Direct government loans, but they do not have all of the benefits. Your best bet is to apply for a Direct Consolidation Loan. To apply, go to www.loanconsolidation.ed.gov.

Getting Out of Default

If you are more than 270 days behind in your student loan payments, you are considered in default. Getting out of default is key to dealing with student loans. Many repayment plans and most postponement options require that you not be in default, or that you make three reduced, timely payments to qualify for a postponement or reduced-payment option. In addition, as long as you're in default, you are not eligible to get new loans or grants. As just discussed, you can get out of default if you qualify

to have your loan canceled (discharged), or by getting a consolidation loan with a repayment plan matched to your income.

Here is an additional way to reinstate your eligibility for government loans and other government benefits, and to get out of default. You can set up a “reasonable and affordable payment plan” with your loan holder. Borrowers in default have a statutory right to such a payment plan, based on financial circumstances. Be careful in negotiating a plan. By the time you are in default, your loan may be held or serviced by a state guarantee agency or a collection agency under contract with the Department of Education. Some loan servicers, especially collection agencies, may try to make you agree to payments higher than you can afford.

If you make six consecutive and timely payments (within 15 days of when due) under a reasonable and affordable payment plan, you become eligible to apply for new federal student loans or grants if you want to return to school. But beware: If you default after you complete the six payments, you cannot enter into another reasonable and affordable payment plan. You can renew eligibility through such a payment plan only once. However, if you are unable to maintain on-time payments for six consecutive months during the first time you get a reasonable and affordable payment plan, you may try another reasonable and affordable payment plan.

Six payments are not enough to get you out of default. In order to get out of default, you must make at least nine timely payments (within 20 days of when due) in

a period of ten consecutive months. Perkins rehabilitation does not specify that the payments must be reasonable and affordable, only that the nine required payment amounts are to be set by the school. If you have a Perkins loan, you should negotiate for reasonable and affordable payments.

After you make the qualifying number of payments, the guaranty agency or Department of Education can usually sell your loan to a new lender. This is called loan rehabilitation. Once your loan is rehabilitated, you will be put on a standard ten-year repayment plan or you should request one of the more flexible options discussed in “Repayment Plans,” above. However, you can only get one loan rehabilitation after August 13, 2008, so be sure the plan is something you can handle before you agree to it. You will not have a second chance. Loan rehabilitation also wipes out the default notation on your credit report.

The option to rehabilitate (bring current) a loan is not automatically available if the creditor has already gone to court and obtained a judgment against you for the debt. Lenders have the choice to rehabilitate these loans but are no longer required to do so.



TIP

Try consolidation first. Loan consolidation is usually a faster way to get out of default than a reasonable and affordable payment plan. Once you get a Direct Consolidation Loan, you will immediately be taken out of default status.

You will stay out of default as long as you keep making payments.

Filing for Bankruptcy When You Can't Pay

If you don't qualify to have your loan canceled (discharged), for deferment, or for one of the payment or consolidation options, eliminating your student loan debt in bankruptcy is another—although remote—possibility. It's very difficult to get rid of student loan debt this way.

You can discharge (cancel) student loans in bankruptcy if repayment would cause you “undue hardship.” This standard applies to private loans, as well as to the federal Direct and federally guaranteed loans. This is a difficult, although not impossible, standard to meet. If you are considering bankruptcy primarily as a way to discharge student loan debt, you should talk to an attorney experienced in handling student loan debts in bankruptcy to find out whether you have a chance of showing undue hardship.

In determining undue hardship, most bankruptcy courts look at the three factors discussed below. If you can show that all of the factors are present, the court is most likely to discharge your loans. If only some of the factors apply, discharge is less likely. However, some courts might discharge a portion of your loans if doing so would help you repay the remaining portion.

In deciding whether it would be an undue hardship for you to repay your student loans, most bankruptcy courts look for:

- **Poverty.** Based on your current income and expenses, you cannot maintain a minimal living standard and repay the loans.
- **Persistence.** It is not enough that you can't currently pay your loan. You must also demonstrate to the court that your current financial condition is likely to continue for a significant portion of the repayment period.
- **Good faith.** You've made a good-faith effort to repay your debt.

Some bankruptcy courts don't limit themselves to these three factors, but instead consider all facts they deem relevant. For example, some courts consider whether you were misled and did not receive education that would allow you to get a job with sufficient earnings to repay the loan. Examples include a vocational school that lacked necessary equipment; or a degree school that lacked adequate teaching staff and you could not transfer credits elsewhere to finish because the credits were not transferable. Whether the court in your area uses the three-factor test or considers the totality of the circumstances, you will have a very tough time getting student loans discharged in bankruptcy. Generally, courts look for reasons to deny student loan discharges. However, if you are older (at least 50 years old), you are likely to remain poor, and you have a history of doing your best to pay off your loan, you may be able to obtain a discharge.

**TIP**

Bankruptcy might still help. Even if bankruptcy is unlikely to erase your student loans, it may help you get rid of other debts, freeing up money to pay your student loans. Another option is to file for Chapter 13 bankruptcy (see Chapter 15) and pay the amount you are behind on your student loan in a court-approved payment plan over three to five years.

Consequences of Ignoring Student Loan Debt

Student loans are not secured debt, and so you will not lose your home or car if you don't pay them. But they are also different from most other unsecured debts. If you don't pay your student loans, you won't be able to get additional student loans or grants or other government loans in the future. In addition, you will be subjected to a number of special debt collection tactics that only the government can use. These government collection tools can have very severe consequences.

First, the government can charge you hefty collection fees, often far in excess of the amount you originally borrowed. Second, unlike almost every other kind of debt, there is no statute of limitations for collection of student loans. This means that even 20 or 30 years after you went to school, the government can continue to try to collect your loans.

The government can also:

- Seize your income tax refund.
- Garnish up to 15% of your disposable income.

- Take some federal benefits that are usually exempt from collection, such as Social Security income, although the government must let you keep a certain amount of this income.

If you get notice of a wage garnishment or tax intercept, you have the right to challenge it by requesting a hearing. Sometimes just the act of requesting a hearing prompts the collector to agree to a payment plan. If you can pay a small amount, you should consider the various means of postponing payments or establishing a payment plan you can afford.

Where to Go for Help

Here are a few good resources for learning about and dealing with student loan debt.

The student loan ombudsman office. The Department of Education's student loan ombudsman helps borrowers with student loan problems. The ombudsman will research your complaint and, if it finds that it is justified, will work with you, the Department of Education, and your loan holder to resolve the problem. If it decides that your complaint is not justified, it will explain why. The ombudsman is a "last resource"; usually it will help you only after you have tried to resolve the problem yourself.

You can contact the student loan ombudsman office at 877-557-2575. Assistance is available in both English and Spanish. It also has an excellent website (www.ombudsman.ed.gov) where you can complete a request for assistance.

The Department of Education. The Department of Education also has lots of information about student loans, as well as application forms for all of the various repayment, cancellation, postponement, and other programs discussed in this chapter. You can reach the Department at 800-621-3115 (voice) or 800-730-8913 (TDD). Or, visit its website at www.ed.gov to get information and download forms.

Legal aid. If you are having problems making your student loan payments because you have a low income or because you have been a victim of fraud or abuse by a for-

profit school, you may be able to get help from your local legal aid or legal services office. You can find a national listing of legal aid offices at www.lsc.gov. Click on the map to find a program in your state.

National Consumer Law Center's Student Loan Borrower Assistance Project at www.studentloanborrowerassistance.org. This is a resource for borrowers, their families, and advocates representing student loan borrowers. This site is for people who already have student loans and want to know more about their options and rights.



Child Support and Alimony

How Child Support Is Determined.....	248
Modifying the Amount of Child Support.....	250
Legal Reasons That Justify a Support Change.....	250
Step 1: Negotiate With Your Child's Other Parent.....	251
Step 2: If Negotiations Fail, File Modification Papers.....	252
When You Can Stop Paying Child Support	253
If Paternity Is Disputed.....	254
Enforcement of Child Support Obligations	254
Your Income May Be Automatically Withheld.....	255
Your Income Tax Refund Could Be Intercepted	256
Liens May Be Placed on Your Real and Personal Property.....	257
You May Be Required to Post a Bond or Assets to Guarantee Payment.....	257
The Arrears May Be Reported to Credit Bureaus	258
You May Be Publicly Humiliated	258
You Might Be Denied a State License or U.S. Passport	258
You Might Be Held in Contempt of Court and Jailed	259
Your Wages May Be Garnished and Other Assets Seized.....	260
The Arrears Might Be Sent to the State Enforcement Agency.....	261
You Might Be Criminally Prosecuted	261
Alimony	261
Bankruptcy and Child Support or Alimony Debt	262
Taxes, Child Support, and Alimony.....	262

“The fundamental evil of the world arose from the fact that the good Lord has not created money enough.”

—Heinrich Heine,

German poet and critic, 1797–1856

Benjamin Franklin once said that only two things in life are certain: death and taxes. To that short list we might add the obligation to support one’s family.

This chapter will tell you:

- how child support and alimony are set and collected
- how you can seek to have your child support or alimony obligation modified, and
- what happens to child support and alimony obligations if you file for bankruptcy.

But first, a loud and clear warning: Regardless of the circumstances, you must pay your child support. First, your child deserves and has a right to be supported. Second, if you don’t pay, you will be incurring the proverbial debt from hell. It never goes away. No bankruptcy judge can cancel past-due support. No state or federal judge can reduce it. It just sits there generating interest until it—and the interest—is paid in full. In the meantime, you are subject to intrusive collection techniques.

It’s true that many parents who don’t pay child support believe they have a good reason for not doing so. Here are some of the common excuses.

- They have a new family to support.
- The custodial parent won’t let them see their kids.

- The custodial parent moved their kids far away.
- The custodial parent misuses the support.
- The custodial parent plays all day while they have to work.
- The court ordered them to pay too much.

Reasonable as your excuse may seem to you, it makes no difference to the judge. If you owe child support and have the apparent ability to pay (even if you aren’t working at the time), you will not only be subject to harsh collection techniques but may also do a stretch of jail time if a judge gets angry enough.



RESOURCE

Information on child support

enforcement laws in your state. Visit the Office of Child Support Enforcement website at www.acf.hhs.gov.

How Child Support Is Determined

The federal Family Support Act of 1988 requires all states to use a formula or guidelines to calculate child support. Each state, and the District of Columbia, sets its own formula or guidelines. If you think your existing child support order isn’t in line with your state’s formula or guideline, you or your child’s other parent can ask the court to review it. (See “Modifying the Amount of Child Support,” below.)

If You Are Owed Child Support or Alimony

This chapter addresses the concerns of people who pay child support or alimony, not those entitled to receive it. Many people, of course, have debt problems because they aren't receiving support to which they are entitled. This chapter doesn't explain how to get that support, but it should help you understand your rights and the strategies available to you.

The U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement, has a website full of information at www.acf.hhs.gov/programs/cse. You can find your state's child support enforcement agency there, as well as publications, information, and even help locating a missing parent.

Be cautious about private agencies offering to collect past-due support—they often charge exorbitant fees and can be less than reliable. Before signing up, find out how much it will cost and the agency's rate of success. Then call the local Better Business Bureau and your local district attorney's office to see whether the agency is legitimate.



RESOURCE

Child support calculators. Judges and lawyers use fancy software to make precise support calculations, but you can find simple support calculators for your state on the Internet.

You can find your state's calculator at www.alllaw.com or by putting the name of your state and "child support calculator" into a search engine. Another website, www.supportguidelines.com, has the actual guidelines for each state.

While formulas differ from state to state, they almost always start with the parents' respective incomes and the amount of time the children spend with each parent. Other factors the formula may consider include:

- the number of children subject to the support order
- whether either parent is paying support from a previous marriage
- which parent is paying for health insurance, and the cost
- whether either parent receives irregular income such as bonuses or incentive pay
- whether either parent is required to pay union dues or has other mandatory paycheck deductions, and
- which parent is paying day care costs and the cost of other necessities or programs.

A court may require you to pay the following expenses as a part of child support:

- health and dental insurance for your children or health and dental costs if neither parent has insurance covering the children—in fact, many states mandate that a parent pay for medical insurance if the costs are reasonable
- life insurance naming your child's custodial parent as the beneficiary
- child care so that the custodial parent can work or go to school, and

- education costs for your children—sometimes including college.

Unpaid Child Support and Arrears

Unpaid child support is court-ordered child support that you failed to pay as it became due. This past-due support sometimes is referred to as arrears or arrearages. No matter what it's called, child support you failed to pay is a debt that cannot be reduced or discharged in bankruptcy. Although you can ask a judge to change the amount of support you will have to pay in the future (see "Modifying the Amount of Child Support," below), no judge can change the amount of unpaid support you owe. That debt will remain until you pay it off in full, period.

Modifying the Amount of Child Support

Even before you fall behind on payments, you may realize that you owe child support you can't afford to pay.

If so, you must take the initiative to change your child support order. This requires that you either make an agreement with your spouse to change the order or go to court, request a modification, and show the judge that you cannot afford the ordered support or that some other significant change in circumstance warrants a reduction. If you don't get the order modified and your child

support arrears build up, a court won't retroactively decrease it, even if you were too sick to get out of bed during the affected period. To repeat: Once child support is owed and unpaid, it (and the interest on it) remains a debt until it is paid.

Legal Reasons That Justify a Support Change

To get a judge to reduce a child support order, you must show a significant change of circumstance since the last order. What constitutes a significant change of circumstance depends on your situation. Generally, the condition must not have been considered when the original order was made and must affect the current standard of living of you, your child, or the custodial parent. Changes that qualify as significant include:

- **Your income has substantially decreased.**

The decrease must be involuntary or due to reasons that will ultimately improve your child's situation, like training for a better job. If you quit your job to retire or become a basket weaver, the court probably won't modify your support obligation. (In those cases, income may be "imputed" to you, based on your ability to work and your skills, even if you aren't actually working.) However, if you quit your job to attend business school, the court may temporarily decrease the amount, expecting you to earn more money and pay more child support after you graduate.

- **The custodial parent's income has substantially increased.** Not all increases in the custodial parent's income will qualify. For example, if your child's needs have increased as the custodial parent's income has risen, you probably won't get a reduction. Or, if the custodial parent's income increase is from a new spouse's earnings, most courts won't factor that in, because the new spouse has no obligation to support your child. However, if the new spouse is contributing significantly to the other parent's household expenses, you may be able to argue for a reduction on that basis.
- **Your expenses have increased.** You may be entitled to a reduction, for example, if you have a new child or have developed an expensive, ongoing medical condition.
- **Your child's needs have decreased.** You may be entitled to a reduction if, for instance, your child is no longer attending private school. But as children grow older, their financial needs usually go up rather than down.
- **The children spend more time in your custody than when the court initially ordered the support.** In this situation, you may be entitled to a reduction because the other parent needs less money for the children.

As you can see, the judge won't be inclined to modify your support order unless conditions have changed substantially since the order was issued. If you just feel the court was wrong the first time, you're probably out of luck.

Child Support and Visitation

If your child's custodial parent is interfering with your visitation rights, you don't have the right to withhold support. But you can schedule a court hearing where you can present evidence to a judge that shows there has been substantial interference with your visitation right and ask the judge to rectify the situation. (Modification hearings are explained below.)

You'll need to document a persistent pattern of being denied access to your children. A good way to do this is to take notes on a calendar. Missing a weekend visit or two won't be enough. If you've seen the kids once in eight months, however, a court may well hold the custodial parent in contempt of court for violating the court order allowing more frequent visitation. In addition, some judges will order your child's custodial parent to reimburse you for expenses you incur trying to exercise your visitation rights. And a judge may suspend your obligation to pay child support if your child's custodial parent and the child have disappeared altogether, leaving no one to whom you can send the support.

Step 1: Negotiate With Your Child's Other Parent

A child support modification hearing can be time-consuming, costly, and unpleasant if the other parent opposes it. In other words, you want to avoid a contested hearing if at all

possible. If you believe a change in support is justified, call your child's other parent and talk about your changed circumstance before you file court papers. If you were laid off or in an accident, the other parent knows the court will probably order some change in the amount and may agree to your proposed amount ahead of time.

If you reach an agreement to reduce the amount of child support you owe, make sure to get your new agreement in writing. Then take it to the court for approval. You may need the help of a lawyer or legal typing service to do this. (See Chapter 19 for advice on finding legal help.) The judge's signature approving your agreement and making it into a court order is important, because your informal modification (one that you haven't taken before a judge to approve) isn't binding. If your ex has a change of heart, you won't be excused from paying the difference between the court-ordered amount and the reduced amount (though you can always go to court and get a change that applies to future payments).

EXAMPLE: When Mia and Zander divorced, Mia got full custody of the children, and Zander paid child support. After Zander got a larger apartment, the children began to spend every other week with him, so Mia agreed to accept half as much child support but signed no written agreement. Later on, when Zander wanted the children for the whole summer, Mia went back to court to claim unpaid child support. Zander will be on the hook for the entire amount.

Step 2: If Negotiations Fail, File Modification Papers

If your child's other parent won't agree to a reduction in child support, you will have to convince a judge to grant your request. In most states, to modify child support you must fill out and file court papers, schedule a hearing, and present evidence to a judge. You may need the help of a lawyer. (See Chapter 19 for advice about finding one.) The kind of evidence you need to show the court includes:

- a sworn statement from your most recent employer, if you were recently let go
- previous and current paychecks to show a pay or hours cut
- records of your job search, if you've been looking unsuccessfully, and
- sworn statements from medical professionals if you are sick, injured, depressed, or otherwise unable to work.

Don't delay filing your request for child support modification. Under federal law, the effective date of a child support modification order cannot be earlier than the date that your formal request was served on the other parties.

A special rule applies to members of the military. Parties eligible for a support modification due to military activation or out-of-state deployment may use a special "notice of activation and request" procedure. An order modifying or terminating support based on the servicemember's change in income takes effect on either the date of service of the notice on the opposing party, or the date of the member's activation,

whichever is later. If you're in the military and need a support modification, it would be a good idea to talk to an attorney with experience in military divorce. You can also ask your JAG officer for assistance.

Simplified Modification Procedures

Some states try to make it easy for parents requesting an increase or decrease in child support.

The procedure is meant to be user friendly for parents without attorneys. But lawyers are welcome to take advantage of the procedure as well. Court clerks or case managers assist you in filling out the papers. The hearings often take place before a court magistrate or hearing examiner, not a judge. Decisions may be rendered on the spot or within about 30 days.

To find out whether your state has a simplified modification procedure, call the county court clerk, the state child support enforcement agency, or the district attorney's office.



CAUTION

Remember: Past-due support debts will not go away. A modification of child support cannot change your obligation to pay past-due child support.

If the judge denies your request and you can't come up with the necessary payments by reducing your living expenses, you'll need

to consider your options, including finding ways to increase your income or decrease your expenses. You may need to consider filing for bankruptcy. It won't get you out of your support obligation, but it will let you get rid of some of your other debts—such as those owed to credit card companies and health care providers—and free up money to meet your child support obligation.

When You Can Stop Paying Child Support

You must pay child support for as long as your child support court order says you must. If the order does not contain an ending date, you must support your children as long as your state requires it. Some common state rules are:

- until they reach 18
- until they are 19 or finished with high school, whichever occurs first (as long as they are a full-time student and living with a parent)
- until they reach 21
- as long as they are dependent, if they are disabled, or
- until they complete college.

To find out exactly what your state law requires, you'll need to do a little legal research or talk to a lawyer. (See Chapter 19.)



RESOURCE

State laws on child support duration.

You should be able to find the information about when child support terminates in your state at www.supportguidelines.com.

In addition, your child support obligation will probably end early if: Your child joins the military, gets married, or moves out of the house to live independently, a court declares your child legally emancipated, or your parental rights are terminated.

Even when you are no longer liable for support or your support obligation is reduced, you still must pay past-due child support. If the custodial parent goes to court and gets a judgment for unpaid support, that judgment can be collected for as long as your state lets a creditor enforce a judgment. This typically covers a period of at least five to 20 years, and the period is usually extended if the judgment is renewed. (Chapter 14 explains how long judgments can last.) In most states, judgments for unpaid child support can easily last your entire life.

If Paternity Is Disputed

If you have a child for whom you're not paying child support and you never married the child's mother or acknowledged paternity (for example, by signing a Declaration of Paternity, having your name put on the birth certificate, or supporting the child), you may find yourself in court on a paternity and child support action—up to 18 years after the child was born. The suit may be filed by the other parent, a child support services agency, or a prosecutor.

Most states make it easy and quick to get a paternity ruling. In many cases, the right to a hearing before a judge has been eliminated, and administrative agencies can hear cases. If you're served with notice of a

paternity hearing and you fail to appear, a default paternity order can be entered.

The court may order blood or DNA tests to determine whether there is a biological relationship between you and the child. If the court finds that you are the father, you are likely to be ordered to pay support until the child turns 18. In some states you may also be required to pay unpaid support, covering up to three years. In other states, you aren't responsible for support until the date that the custodial parent filed the support petition in court.

Enforcement of Child Support Obligations

If you owe a lot of unpaid child support, your child's other parent has a number of choices for how to enforce support. First, the other parent may go to court and ask a judge to issue a judgment for the amount of the arrears. This is called a judgment for child support.

EXAMPLE: Al was ordered to pay his ex-wife Cindy \$550 per month in child support. He lost his job and hasn't made the last three payments. He is in arrears a total of \$1,650 under the original child support order. Cindy can try to collect the arrears owed under the child support order, or she can go ask a judge to grant her a judgment for the amount Al owes.

Even without a judgment for past-due child support, a person owed child support can use the most effective and most commonly used collection methods.

It's possible that you are having money withheld from your paycheck or are required to send money to a state agency that in turn sends a check to the custodial parent. If that's not the case yet, your ex might try to get that set up now to ensure support is paid in the future.

Both the federal and state governments are now aggressively involved in enforcing child support orders. States are required to help parents collect child support, even if the parent who owes money has moved out of state. Extensive database and registry systems track parents who owe child support. Information is shared among states and between the states and the federal government. For example:

- Employers must report all new hires to their state's child support enforcement agency. The agency forwards this information to the National Directory of New Hires, a centralized registry that matches employee names with the names of parents who owe child support. The National Directory sets up income-withholding orders for delinquent parents.
- States must ask for the Social Security numbers of both parents when a child is born and must pass those numbers on to the state agency that enforces child support.
- Judges sometimes order noncustodial parents to pay child support to the state child support enforcement agency, which in turn pays the custodial parent. This method is often used when the noncustodial parent is without regular income (perhaps self-employed) or

when parents agree to waive the automatic wage withholding (this is explained below).



CAUTION

You can run but you can't hide.

Each state and the federal government maintains locators that search federal, state, and local records to find missing parents. The federal service has access to Social Security, IRS, and all other federal information records except census records. The state locator services will check welfare, unemployment, motor vehicle, and other state records.

Federal Child Support Enforcement

The Department of Health and Human Services (HHS) enforces federal laws having to do with child support through its Office of Child Support Enforcement in the Administration for Children and Families (ACF). For more information about these federal programs and links to state enforcement programs, visit www.acf.hhs.gov/programs/cse.

Your Income May Be Automatically Withheld

The federal Family Support Act requires all states to have an automatic income withholding program that seizes part of a parent's wages to pay child support orders that were made or modified on or after January 1, 1994. For pre-1994 child support orders,

the court may order income withholding if the custodial parent goes back to court to complain that you are in arrears.

The income withholding is automatic unless the parties agree otherwise (for example, the custodial parent agrees not to serve the order on your employer, as long as you pay her directly) or unless there is good cause not to require immediate withholding. For example, in some states, if the parent has a reliable history of paying child support, income withholding is not automatic.

The automatic income withholding provisions also apply to orders that combine child support and alimony, but not to orders for alimony only. If income withholding is ordered in one state (for example, where your child lives), but you live in another, the state you live in will enforce the income withholding.

An automatic income withholding order works quite simply. After a court orders you to pay child support, the custodial parent sends a copy of the court order to your employer. Each pay period, your employer withholds a portion of your pay and sends it to the custodial parent or to the state agency that distributes child support.

If you don't receive regular wages but do have a regular source of income, such as income from a pension, a retirement fund, an annuity, unemployment compensation, or other public benefits, the court can order the child support withheld from that income. Instead of forwarding a copy of the order and the custodial parent's name and address to an employer, the court sends the information to the retirement plan

administrator or public agency from which you receive your benefits.

If your income is from Social Security or a private pension governed by either ERISA (Employee Retirement Income Security Act) or REA (Retirement Equity Act), the administrator might not honor the court order. This is because Social Security and many private pensions have "antialienation" clauses that prohibit the administrator from turning over the funds to anyone other than the beneficiary (you).

Your Income Tax Refund Could Be Intercepted

If you owe more than \$500 in child support and the custodial parent has contacted the state's child support enforcement agency for help, or if you owe \$150 and the custodial parent receives welfare, the child support enforcement agency in the state where the custodial parent lives will notify the U.S. Department of the Treasury. The IRS will then take money out of your tax refund to pay the amount due, or at least part of it.

If you are now married to someone other than the custodial parent to whom you owe support, the IRS will take the refund from your joint income tax return. In some states, however, your new spouse won't be liable for your child support debts. If you live in one of those states, your new spouse can request a reimbursement from the IRS by completing Form 8379, *Injured Spouse Claim and Allocation*, and filing it with Form 1040 or 1040A. You can obtain a copy of this form and directions for filling it out at the IRS website at www.irs.gov.

States that impose income taxes also intercept tax refunds to satisfy child support debts.

Liens May Be Placed on Your Real and Personal Property

A custodial parent who is owed child support can place a lien on your property. A lien is a notice that tells the world that there are claims against you for money. Usually the custodial parent files a lien with the same office where the property is registered or recorded. For example, a lien on your house would be filed with the county recorder in the county where your house is located. The lien remains until your child is no longer entitled to support and you've paid all the arrears, or until the custodial parent agrees to remove the lien. With a lien, the custodial parent can force the sale of your property or wait until the property is sold or refinanced and then get the money that's owed. Although some states require that the custodial parent obtain a judgment for the arrears before putting a lien on property, most states allow liens to be imposed on property when you miss court-ordered support payments. To check the lien requirements in your state, go to the Office of Child Support Enforcement website at www.acf.hhs.gov/programs/cse.

Your best defense is to schedule a hearing before a judge and claim that the lien impairs your ability to pay your current support. For example, if the lien is on your house and is going to keep you from borrowing money to pay the child support arrears, make that clear to the judge. You'll probably need to

bring copies of loan rejection letters stating that your poor credit rating—due to the lien—was the reason for the rejection.

To help locate the assets of parents who owe child support, all states are required to maintain what is known as a “data match system.” Under this system, financial institutions that do business in a state, such as banks, insurance companies, and brokers, must provide that state's child support enforcement agencies with account information on clients who have past-due support obligations. The agency can then use this information to place a lien on and seize assets of people who owe child support.

You May Be Required to Post a Bond or Assets to Guarantee Payment

Some states allow judges to require parents with child support arrears to post a bond or assets, such as stock certificates, to guarantee payment. In some states, for example, if a self-employed parent misses a child support payment and the custodial parent requests a court hearing, the court can order the noncustodial parent to post assets (such as by putting money into an escrow account).

Most states' child support enforcement agencies have the power to require parents to post bonds or assets. But not all agencies use this measure, and others use it for extreme cases only. In practice, few bond companies will write bonds for child support debts. Most parents will find that they must put property into an escrow account or, in some states, into a trust account that is managed and invested for the child's benefit.

You must be given notice of the action seeking to require you to post assets or a bond and have an opportunity to oppose it. You may have a good defense if posting the assets or bond would impair your ability to pay your current support or to borrow money to pay the arrears.

The Arrears May Be Reported to Credit Bureaus

The law requires credit bureaus to include information about overdue child support in your credit report. Creditors and lenders may deny credit based on this information. In addition, sometimes creditors and lenders report the whereabouts of missing parents to child enforcement agencies.

Child support arrears remain on your credit report for up to seven years, unless you make a deal with the child support enforcement agency. An agency may agree not to report negative information to the credit bureau if you pay some or all of the overdue support. But few child support enforcement agencies will agree to eliminate all negative information. Most will at least report that you were delinquent in the past. (See Chapter 17 for information on how to correct your report if information reported is wrong or obsolete).

Many states require child support enforcement agencies to notify you before reporting overdue child support information to the credit bureaus. Usually, the enforcement agency must give you a reasonable opportunity to dispute the information. Many states require agencies to report only overdue amounts exceeding \$1,000. (For

information on how to find your state law, see Chapter 19.)

You May Be Publicly Humiliated

Congress has encouraged states to come up with creative ways to embarrass parents into paying the child support they owe. One method used nationwide by an association of state child support enforcement agencies is the publishing of “most wanted” lists of parents who owe child support.

In some areas, for example, the family court lists the names of parents not paying child support on cable television 300 times a week and in a full-page newspaper advertisement once a month. One county using this technique claims to have located over 50% of the parents owing support. Similarly, the Iowa attorney general reports that 90% of missing fathers who owe child support have been located through the state’s “most wanted” poster program.

If your name is included on a most wanted list, the only way to get your name removed is to turn yourself in and begin paying your child support. You’ll be ordered to make monthly payments henceforth, your wages will be attached, and the court will take steps to see that you pay your back child support. But that may be better than having this kind of notoriety in your community.

You Might Be Denied a State License or U.S. Passport

In most states, parents with child support arrears will be denied an original or renewed

driver's or professional license (for doctors, lawyers, contractors, and the like) and, if they owe \$2,500 or more, may be denied a U.S. passport. You are also at risk of having your current driver's license suspended.

You Might Be Held in Contempt of Court and Jailed

Failure to obey a court order is called contempt of court. If you owe unpaid child support, the other parent can ask for a hearing before a judge and ask that you be held in contempt of court. You must be served with a document ordering you to attend the hearing, and then must attend and explain why you haven't paid the support you owe. If you don't attend, the court can issue a warrant for your arrest. Many courts do issue warrants, making county jails a resting stop for parents who don't pay child support and fail to show up in court.

If you attend the hearing, the judge can still throw you in jail for violating the order to pay the support. And the judge might do so, depending on how convincing your story is as to why you haven't paid.

To stay out of jail, go to the hearing prepared to show that you have not deliberately disobeyed the court's order to pay child support. You may have to convince the judge that you're not as irresponsible as it appears. Preparing evidence is a must. Your first step is to show why you didn't pay. If you've been out of work, get a sworn statement from your most recent employer stating why you were let go. If you went job searching but had no luck, provide records of when you

interviewed or filled out an application and with whom you spoke. Remember: Disputes with the custodial parent about custody or visitation are never an acceptable excuse for not paying child support.

Next, you must explain why you didn't request a modification hearing when it became evident that you couldn't meet your support obligation. For example, if you've been in bed or otherwise immobilized—depressed, sick, or injured—get sworn statements from all medical professionals who treated you. Also, get statements from friends or relatives who cared for you. Emphasize your most compelling arguments (for example, you couldn't get out of bed), but never lie.

If you spoke to lawyers about helping you file a modification request but couldn't afford their fees, bring a list of the names of lawyers you spoke to, the date you spoke to each one, and the fee the lawyer quoted you. If you tried to hire a legal aid lawyer to help you but you make too much money to qualify for such assistance (or the office had too many cases, or doesn't handle child support modifications), make sure you bring the name of the lawyer and the date of the conversation.

The judge may put you in jail or may instead order you to make future payments and set up a payment schedule for you to pay any unpaid support. The judge won't reduce the amount of your unpaid support—arrears cannot be modified retroactively—but may decrease your future payments. The judge may also order that your wages be withheld, that a lien be placed on your

property, or that you post a bond or other assets.

Judges rarely put a parent in jail for contempt of court. Usually, it happens only if an income-withholding order and a wage garnishment won't work. Courts recognize that a jailed parent cannot earn money to make child support payments.

Your Wages May Be Garnished and Other Assets Seized

Child support arrears that are made into a court judgment can be collected by the various methods described in Chapter 14. Even if the judgment was obtained in one state and you have since moved to another state, the custodial parent can register the judgment in the second state and enforce it there.

The most common method of collecting a judgment for overdue support is wage garnishment. A wage garnishment is similar to income withholding. A portion of your wages is removed from your paycheck and delivered to the custodial parent before you ever see it. In many states, the arrears need not be made into a judgment to be collected through wage garnishment.

To garnish your wages, the custodial parent obtains authorization from the court in a document usually called a writ of execution. Under this authorization, the custodial parent directs the sheriff to seize a portion of your wages. The sheriff in turn notifies you and your employer.

The amount garnished is a percentage of your paycheck. What you were once ordered

to pay is irrelevant. The court simply wants to take money out of each of your paychecks—and leave you with a minimum to live on—until the unpaid support is made up.

If a court orders that your wages be garnished to satisfy any debt except child support or alimony, a maximum of roughly 25% of your net wages can be taken. For unpaid child support, however, up to 50% of your net wages can be garnished, and up to 60% if you are not currently supporting another dependent. If your check is already subject to wage withholding for your future payments or garnishment by a different creditor, the total amount taken from your paycheck cannot exceed 50% (or 65% if you are not currently supporting another dependent and are more than 12 weeks in arrears).

To put a wage garnishment order into effect, the court, custodial parent, state agency, or county attorney must notify your employer. Once your employer is told to garnish your wages, your employer tells you of the garnishment. You can request a court hearing, which will take place shortly after the garnishment has begun. At the hearing, you can make only a few objections:

- The amount the court claims you owe is wrong.
- The amount will leave you with too little to live on.
- The custodial parent actively concealed your child, as opposed to merely frustrating or denying your visitation (not all states allow this objection).
- You had custody of the child at the time the support arrears accrued.

If the wage garnishment doesn't cover the amount you owe, or you don't have wages or other income to be garnished, the custodial parent may try to get the unpaid support by going after other items of your property. Examples of the type of property that may be vulnerable include cars, motorcycles, boats, airplanes, houses, corporate stock, horses, rents payable to you, and accounts receivable. In some cases, even spendthrift trusts and your interest in a partnership may be used for payment.

The Arrears Might Be Sent to the State Enforcement Agency

If the custodial parent receives welfare, the state's child support enforcement agency is required to help collect unpaid child support. For a \$25 fee, the agency will also help any parent trying to collect child support. If you move out of state while you owe unpaid child support, state laws require that when the custodial parent contacts the local state child support enforcement agency, that agency must contact the agency in the state where you now live. The agency in your state then contacts you and orders you to pay the child support. If you pay that money to the state agency in your state, the agency will send it to the agency in the state where the custodial parent lives.

When the state agency is involved, you'll receive a notice requesting that you attend a conference. The purpose of the conference is to establish your income and expenses, including support for other children, and how much you should pay. The agency is

likely to propose that you pay a lot. You should emphasize, truthfully, your other necessary expenses—food, shelter, clothing, other kids, and the like. Bring receipts, bills, and all other evidence of your monthly costs. If you don't show up, the agency may initiate criminal charges against you for failure to appear.

You Might Be Criminally Prosecuted

In many states, it's a misdemeanor to fail to provide support for your child. While criminal prosecution isn't all that likely, the involvement of a county attorney increases the possibility. Also, if you have violated a judge's order enough times, the judge may report you to prosecutors.

In addition, under the federal Child Support Recovery Act of 1992 (also known as the Deadbeat Dad Law), failure to pay support for a child living in another state is a federal crime. To be prosecuted under this law, the parent must have owed more than \$5,000 for more than a year, and the failure to pay must be deliberate.

Alimony

Alimony, also called spousal support or maintenance, is money paid by one ex-spouse to the other for support. No federal law requires states to have guidelines for setting the amount of alimony. In some courts, however, there are formal guidelines, and in others judges have adopted informal written schedules to help them determine the appropriate level of support.

It's very likely that when you got divorced, you signed a settlement agreement that said when alimony would end; usually, it will be when your ex-spouse gets married to someone else or when a specific date arrives. If that's the case, you're stuck with your payments until then. But if there's no provision like that in your divorce papers, you can ask for a modification of the amount of alimony you are required to pay.

To do this, file a motion for modification. You must show a material change in circumstances since the last court order. Depending on your state's law, such changes might include:

- your ex-spouse's living with someone
- your ex-spouse's remarriage
- a decrease in your income (unless it was voluntary—for example, you quit work, took a lower-paying job, or have become a perpetual student)
- a significant increase in your expenses because of your health or the requirement that you care for someone else, like an aging parent, or
- a substantial increase in your ex-spouse's income.

Where you have voluntarily decreased your income, the judge may consider your ability to earn, not just your actual earnings.

If child support and alimony are lumped together in one payment, the collection techniques allowed for child support may be used against you. If they are kept separate, however, only the following techniques can be used to collect alimony:

- interception of income tax refunds
- court hearings

- wage garnishments, and
- other judgment collection methods, such as property liens.

As with child support, alimony arrearages can be reduced to a judgment and collected while the judgment is in effect.

Bankruptcy and Child Support or Alimony Debt

As discussed, bankruptcy won't cancel arrears or a support judgment. These debts and obligations survive bankruptcy.

The primary advantage of filing for Chapter 7 bankruptcy is that you can get rid of many of your other debts, thus freeing up money to meet your current support obligation and to pay off the arrearage.

If you file a Chapter 13 “repayment plan” bankruptcy, you also can get rid of many of your debts, but you will have to pay off the entire support arrearage over the life of your plan—between three and five years. You will also have to remain current on your support obligation during that period, and if you don't, your Chapter 13 case will be dismissed. (Both kinds of bankruptcies are discussed in Chapter 15.)

Taxes, Child Support, and Alimony

Child support and alimony are treated differently for tax purposes. Child support is a tax-neutral event, meaning it is neither taxable nor deductible—you do not need to report it on either end. However, alimony is tax-deductible to the payor and is considered

taxable income to the recipient. In some circumstances, this tax treatment may affect decisions you make about the amount, duration, or payment schedule for alimony, so check with a tax professional if you think the tax consequences might be important to you.

How Bankruptcy Affects Marital Debts

Child support and alimony are never discharged (wiped out) in bankruptcy. However, other types of debt created in the course of a divorce or separation may be discharged—in Chapter 13 bankruptcy only, not Chapter 7—as long as they are not “in the nature of support.” An example of a debt that can’t be discharged would be one spouse’s agreement to pay the children’s school tuition as part of a divorce settlement agreement. A debt that typically would not be considered in the nature of support would be an agreement by one spouse to pay off the other spouse’s credit card debts as part of an overall division of the marital assets and liabilities.

These debts cannot be discharged in Chapter 7 bankruptcy; you will continue to owe them. (For more on bankruptcy, see Chapter 15.)



If You Are Sued

How a Lawsuit Begins	267
Where the Lawsuit Is Filed.....	267
Service of Court Papers	268
Understanding the Complaint.....	270
When Is Your Response Due?	271
Negotiate	271
Lump Sum Settlement	272
Settlement Involving Installment Payments	272
If the Negotiations Hit a Sour Note	275
Alternative Dispute Resolution	275
Respond in Court	277
Statute of Limitations.....	278
Other Defenses and Claims	280
Responding Formally.....	283
What to Expect While the Case Is in Court.....	287
Discovery	287
Summary Judgment.....	290
Settlement Conference.....	291
Trial	291
When the Creditor Gets a Judgment Against You.....	292
Components of a Money Judgment	292
How Long Judgments Last	293
Enforcing Judgments in Different States	293
How Judgments Are Enforced.....	293
Stopping Judgment Collection Efforts	298

“Lawsuits consume time and money, and rest and friends.”

—George Herbert,
English poet, 1593–1633

“A man who is his own lawyer has a fool for his client.”

—Proverb

If you don’t pay your debts, eventually you’ll probably be sued unless any of the following are true:

- The creditor or collection agency can’t find you. (See Chapter 9.)
- You’re judgment proof. As explained in Chapter 7 (under “Lawsuits”) being judgment proof means that you have no property or income that the creditor can legally take to collect on a judgment, now or in the foreseeable future.
- You file for bankruptcy. One way to prevent a lawsuit is to file for bankruptcy. (See Chapter 15.) Filing for bankruptcy temporarily stops most collection efforts, including lawsuits, dead in their tracks, and you may be able to erase (discharge) many debts in your bankruptcy case.

Being sued is not the end of the world. It doesn’t make you a bad person—millions of people are sued each year. Yes, it can be scary and may cause sleepless nights, but in large part that’s because few people actually know what goes on in a lawsuit. Our perceptions, which typically have been shaped by television shows, movies, and famous trials, are usually off the mark.

Beware of Lawsuits by “Robo” Debt Collectors

Consumer attorneys and the Federal Trade Commission warn that debt buyers, companies that buy debts for pennies on the dollar, are using unfair and unlawful tactics to get default judgments against consumers. Some of these companies may not be able to produce proper evidence of the debt, the amount, or enough information to prove it is the correct debt. Some sue on debts that are time-barred. Others engage in “sewer service,” meaning they do not give you proper notice that you are being sued. Some sue consumers in a distant court so consumers are unlikely to appear to defend against the lawsuit. Understanding the litigation process is more important than ever so that you can defend against the growing use of these tactics.

As this chapter explains, if you are sued on a debt you owe and you have no good defenses, the lawsuit usually takes very little time and money. And if you do have a good defense, depending on how complicated it is, you may be able to assert it without hiring a lawyer.

If you owe someone money and haven’t paid, it’s usually considered a breach of a contract. This chapter explains negotiating and the types of defenses you can raise if you’re sued for breaching a contract. (Chapter 3 discusses debts that you may not owe.)

You may be sued for any number of other reasons—for example, you cause a car accident, slander someone, or infringe

a copyright. These kinds of suits claim that you have injured someone's person, property, reputation, or intellectual property. This kind of injury is called a "tort." These suits are not based on a contractual obligation to pay someone money or failure to pay a preexisting debt.

If you are sued and you have a defense to the allegations made against you, you will have to consult a source beyond this book for help. (See Chapter 19.) If the other side wins, you will owe a debt (in the form of a money judgment), and this chapter explains what you can expect.

How a Lawsuit Begins

A lawsuit starts when the creditor, or a lawyer for a creditor or collection agency, prepares a document called a complaint or petition, claiming that you owe money. The lawyer or creditor files the document with a court clerk and pays a filing fee. The lawyer or creditor then has a copy of the complaint, along with a summons, served on you. The summons is a document issued by the court, notifying you that you are being sued. It usually provides additional information, such as how soon you need to file a written response in court.

The complaint identifies:

- the plaintiff—that's the creditor or collection agency, or possibly another third party the creditor sold the debt to
- the defendant—that's you and anyone else liable for the debt, such as your spouse, a cosigner, or a guarantor
- the date the complaint was filed (this is important if you have a statute of limitations defense, as explained below)
- the court in which you are being sued
- why the creditor is suing you, and
- what the creditor wants from the lawsuit.

Where the Lawsuit Is Filed

The creditor must normally sue you in the state where you live or where the transaction took place. The creditor usually selects the state where you live if it's different from where the transaction took place, because the court requires a substantial connection between you and the state in which you are sued. For example, if you send a check from your home in South Carolina to a mail-order business in Wisconsin and your check bounces, the creditor can sue you in South Carolina, but probably not in Wisconsin. Your connections with Wisconsin—even assuming the transaction took place there—are too insubstantial to sue you there. But some contracts may state that you agree to be sued where the company is located, even though it is across the country. If you are sued on a consumer contract in a state other than where you live, you may be able to resist being sued there. If that's your situation, consider consulting an experienced consumer attorney before you respond.

After selecting the state, the creditor must select a county within the state. This is called the venue for the case. In most states, the creditor can choose the county where you live, the county where the transaction took place, or the county where the creditor

is located. If all of these locations aren't in the same county, most creditors will choose the county where they are located, simply because that is more convenient for them. Some states may not allow cases on consumer contracts to be filed in a different county from where you live or the transaction took place. If the creditor has chosen a county that is terribly inconvenient for you, you can file a motion to have the case transferred to your county. You'll almost certainly need the help of a lawyer to do this.

Once the creditor has selected the state and county, the creditor must choose the court: small claims court or civil court of general jurisdiction. You'll probably be sued in your state's civil court if any one of the following is true:

- The amount of money you owe exceeds your state's small claims limit.
- A collection agency has your debt and is prohibited from suing in small claims court.
- The creditor simply chooses not to use small claims court. No plaintiff has to use small claims court, even on a \$10 debt.

The exact name of the civil court depends on your state, and possibly the amount of money involved. For example, it may be a circuit court, city court, county court, district court, justice court, justice of the peace court, magistrate's court, municipal court, or superior court. Although the names differ, what goes on in each court is pretty much the same. You might also be sued in a federal district court if you owe money to the federal government—for example, on a federally guaranteed student loan.

In civil court, a lawsuit can be time-consuming and expensive, although routine debt collection cases rarely are. In theory, you are required to follow formal procedural and evidentiary rules, but many judges are somewhat flexible when dealing with a person representing himself or herself. While it can be extremely difficult to represent yourself in civil court, more and more people are doing it.



RESOURCE

Resources for representing yourself

in court. Californians will want to get a copy of *Win Your Lawsuit: A Judge's Guide to Representing Yourself in California Superior Court*, by Judge Roderic Duncan (Nolo), which will guide you through presenting a case in regular, not small claims, court. It also contains information on defending a lawsuit. People who decide to handle their own case—in any state—will find *Represent Yourself in Court: How to Prepare & Try a Winning Case*, by Paul Bergman and Sara Berman (Nolo), to be indispensable.

Service of Court Papers

After the creditor files papers with the court, he or she must serve them on you. In most civil courts, you must be handed the papers personally. If you can't be found, the papers can be left with someone over the age of 18 at your home or business, as long as another copy is mailed to you. The creditor cannot serve the papers on you personally, because a party to a lawsuit can't do the actual serving. Most creditors hire professionals

Being Sued in Small Claims Court

Virtually every state has a small claims court to hear disputes involving modest amounts of money. The range is typically from \$1,000 to \$10,000. Small claims courts handle matters without long delays or formal rules of evidence and are intended for people to represent themselves. If you owe the creditor a few thousand dollars or less, you may be sued in your state's small claims court. Even if the amount you owe is above your state's limit, the creditor may opt to sue you in small claims court and give up (waive) the excess.

In most states, you don't need to file a written response to a lawsuit in small claims court. You simply show up on the date of the hearing. If, however, you plan to file your own claim against the creditor for money—for example, if the creditor breached a warranty (see Chapter 3)—you have to file your own claim before the hearing so that both the creditor's claim and your claim are heard together.

Be sure you show up at the hearing. If you don't, most of the time you will lose the case by default and the court will enter a default judgment against you. Prepare carefully for the hearing. Make a list of the important points that support your case. When the hearing starts, ask to give a copy of the list to the judge and the other side. It will help you keep focused and make sure you remember the important points and explain them in order. Make a copy

of all important documents for the judge and the other side, keep a copy for yourself, put the documents in the same order for each of you and, if possible, put numbered Post-its on them so the judge, you, and the other side can easily find the document you want to talk about without fumbling around.

At the hearing, just be yourself and tell your side of the dispute as clearly and briefly as you can. You may want to practice explaining your case to a friend or family member before you get to the hearing. You don't normally need to hire a lawyer, even if your state allows them in small claims court and the creditor has one. Small claims court is designed to operate without lawyers, and most small claims judges feel that people do as well or better without them. If you lose the case, the judge may let you set up a schedule to pay off the judgment in monthly payments—but don't count on it. Depending on your state's law, you may also have the right to appeal to a higher court.

The rest of this chapter assumes that you are not sued in small claims court, but in your state's civil court of general jurisdiction (often called district court, county court, court of common pleas, or a similar name).

If you're sued in small claims court, use *Everybody's Guide to Small Claims Court*, by Ralph Warner (Nolo), as a guide to representing yourself.

called process servers or have a local sheriff or marshal do the job.

Sometimes, a creditor will mail you a copy of the summons and complaint with a form for you to sign and date, acknowledging that you have received the papers. If you sign and date the form, you are deemed to have been served, probably on the date you signed, dated, and returned the form.

It's often a good idea to sign the form and send it back promptly, because you can save money. If you refuse to sign and the creditor can later prove that you declined the opportunity to do so, you may have to pay whatever costs—frequently between \$35 and \$150—the creditor incurred in hiring a process server or sheriff to serve the papers on you personally. That's also a reason not to hide from a process server.

Understanding the Complaint

Complaints are usually written in hyped-up legalese. You may be referred to as the “party of the second part,” not simply “the defendant,” and almost never just by your name. The document may include “heretofores,” “thereafters,” “saids,” and much more. Skim through the complaint and see if you agree or disagree with the basic facts.

To find out what exactly the creditor or collector wants from you, turn to the final pages. Find the word “WHEREFORE,” or a section called “Relief Requested,” and start reading. You'll not only learn how much the creditor says you owe, but, most of the time, you'll also find out that the creditor is claiming you must pay interest, court costs incurred, possibly attorneys' fees,

and “whatever other relief the court deems appropriate.” This last phrase is a catchall added in the event the court comes up with another solution.

If Service Was Done Wrong

Suppose the creditor has a friend serve you, and the friend simply slides the papers under your door. Sure, you got the papers, but service was technically improper because they were not handed to you or left with a responsible person at your home or office, followed by a mailed copy. You now have a choice: You can either ignore the impropriety, or complain about it in court. Unless you complain, the court won't know that service was improper, and it will proceed as if service was proper, expecting you to respond to the suit. If you don't formally respond, a default judgment will probably be entered against you. You can ask the court to set aside the default judgment based on improper service, but you may need the advice or assistance of a lawyer to do this.

Should you complain about improper service? In most cases, no. It would probably require you to pay for a lawyer's help, and the creditor will just hire someone to serve you again. All you buy is a little time, and you might pay a lot for it.

If you have a defense to the claim, the practical course may be to file your answer and then attend the court hearing at the scheduled time. Explain to the judge why you believe the service was improper. If the judge finds that service was adequate, then present your defense and let the judge decide the case.

When Is Your Response Due?

You probably will have between 20 and 30 days to respond in writing (in a document usually called an answer) to the creditor's complaint. The summons tells you precisely how much time you have. You probably will have to pay a filing fee in order to file your answer. If you can't afford the filing fee, ask the court clerk's office if you can request a fee waiver. You may qualify for a fee waiver if you receive public benefits such as SSI or if your income is not enough to pay for the common necessities of life and also pay court fees.

If you don't respond in time, the creditor can come into court and ask that a default judgment be entered against you. Usually the default judgment is granted for the amount the creditor requested. Some judges, however, scrutinize the papers. If the judge feels that the creditor's claim for interest or attorneys' fees is excessive, the judge might not allow it. Other judges will require the creditor to present evidence of actual damages before awarding any money.



SKIP AHEAD

When there's a judgment against you. Many defendants have no real defense and no money to hire a lawyer. In fact, in most routine debt cases (80% to 90%), the creditor wins by default. If you owe money and decide to default, skip ahead to "When the Creditor Gets a Judgment Against You," below. Before you decide to default, be sure to review the complaint carefully to see if it accurately reflects a debt you owe, if the amount is correct, and how old the debt is. That will help

you decide whether to answer or default. Many people who are sued simply default, even if they may have had a good defense. Even if you think you cannot afford to have an attorney represent you, or it won't be cost effective, it may be worthwhile to consult with an attorney about whether there are any defenses you may have. If the creditor or debt collector has violated the law, an attorney may be willing to take the case because the law requires the creditor or debt collector to pay your attorney fees if you win. See Chapters 3 and 9 for examples of creditor's violations of law that may provide you a defense and pay attorneys' fees. There are also other defenses a good consumer attorney may find.

Negotiate

Even if you've avoided your creditor or a collection agency up to this point, it's never too late to try to negotiate. If you call and offer to settle the matter, the collector may agree to suspend, though not withdraw, the lawsuit while you are negotiating. Unless the creditor gives you an extension of time, in writing, to respond to the lawsuit, you should file an answer, even while you are negotiating. For tips on negotiating, see Chapters 5 and 9. If your efforts to negotiate with the collector are unsuccessful, consider contacting a nonprofit debt counseling agency that will work with you to set up a repayment plan by contacting your individual creditors. (See Chapter 19.)

As you decide whether to settle or fight the lawsuit, keep this in mind: If you lose, you probably will have to pay the plaintiff's attorneys' fees and court costs, and that

this can be very expensive. If the plaintiff's lawyers conduct discovery or file a summary judgment motion (explained below), or have to make repeated court appearances, you could wind up having to pay more in fees and costs than the amount you owed in the first place. This does not mean you should give up if you have a good defense. You should just be realistic about the strength of your case and the amount of expenses you may face if you lose.

Lump Sum Settlement

You will be in the best position to settle with a creditor or collector (the plaintiff) if you can offer a lump sum of cash to settle the case. How much the plaintiff will accept depends on many factors, including how likely you are to be able to pay more in the near future. Usually, the plaintiff will insist that you pay between one-third and three-fourths of what you owe. The plaintiff, not wanting to start all over if you miss the payments, is less likely to stop a lawsuit in exchange for a promise to pay in installments.

If the plaintiff agrees to take your lump sum offer, make sure it's accepted as complete settlement of what you owe. Further, make sure the plaintiff agrees to dismiss (withdraw)—and in fact *does* dismiss—the lawsuit filed against you. Ask that the plaintiff dismiss the lawsuit “with prejudice,” which means that the plaintiff cannot sue you again on the same claim. (See “Sample Settlement Agreement or Release,” below.) Of course, get all agreements in writing. You can check to

make sure the lawsuit has been dismissed by visiting the courthouse filing office (or its website) and looking up your case number. (The number is on the papers served on you.) The file should contain a paper called a request for dismissal or something similar.

If the plaintiff hasn't filed a request for dismissal, you may have to take some action yourself. If you can't get the plaintiff (or plaintiff's lawyer) to file the agreed-upon dismissal, prepare one yourself for the plaintiff to sign. Ask the court clerk if your state has a form to use for requesting dismissals. If it does, get a copy and fill it out, but don't sign it in the space for the plaintiff's signature. If your state doesn't have such a form, you may have to visit a law library, find a form book, and prepare a request for dismissal yourself. Once your request is completed, make a copy and send the original to whomever sued you. Ask that the form be signed and sent back to you. Once it comes back, file it with the court clerk yourself. You may have to pay a fee to file the document. Be sure to take a copy with you and have the clerk stamp it to show you filed it. Keep the file-stamped copy of the signed dismissal form.

Settlement Involving Installment Payments

Assuming the plaintiff does agree to settle the case based on your promise to make installment payments, chances are he or she will insist that you agree (“stipulate”) to having a court judgment entered against you if you fail to make payments. The stipulated judgment will be for an amount that you and

Sample Settlement Agreement or Release

This Agreement is entered into on the date below between Christopher's Contracting Company, Creditor, and Donna Markell, Debtor.

Creditor has alleged that Debtor owes him \$7,745 for construction work he did on Debtor's home;

Debtor agrees that she has not paid Creditor any money for the work done but alleges that Creditor damaged her home while doing the construction work;

Creditor has filed Civil Action No. C49903 in the Superior Court for the County of Fairfield, State of California, seeking a money judgment; and

Creditor and Debtor desire to settle their differences and end the above-identified litigation.

In consideration of the undertakings set forth below, Creditor and Debtor agree as follows:

1. Within 20 days of the date this Agreement is entered into, Creditor will file in the Superior Court for the County of Fairfield, State of California, a Dismissal With Prejudice in the above-identified litigation.
2. Creditor further agrees not to make any future claim or bring any future action against Debtor for the acts alleged, or which could have been alleged, in Civil Action No. C49903, occurring up to the time of the entry of that Dismissal With Prejudice.
3. Debtor agrees not to make any future claim or bring any future action against Creditor for acts alleged, or which could have been alleged in a cross complaint, in Civil Action No. C49903.
4. Debtor will, at the time of executing this Agreement, pay to Creditor the sum of \$5,000 as full settlement of any claim of Creditor against Debtor.
5. Creditor agrees to remove all negative information related to this debt from the files maintained by the major credit reporting agencies.
6. *[California; other states may have similar provisions]* The releases recited in this Agreement cover all claims under California Civil Code Section 1542. Creditor and Debtor hereby waive the provisions of Section 1542 which read as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Sample Settlement Agreement or Release (cont'd)

- 7. Creditor and Debtor will bear their own costs, expenses, and attorneys' fees.
- 8. This Agreement embodies the entire understanding between Creditor and Debtor relating to the subject matter of this Agreement and merges all prior discussions between them.

Dated: May 30, 2010

Creditor's signature, address, and phone number:

Stephen Christopher
1782 Main Street, Fairfield, CA
707-555-9993

Debtor's signature, address, and phone number:

Donna Markell
98 South Acorn Ave., Fairfield, CA
707-555-0081

the plaintiff agree on to settle the case. Sign the stipulated judgment if it is acceptable to you, but make sure the collector promises *in writing* not to file it with the court unless you fail to make the installment payments. This way, your credit file won't show that there's a judgment against you. Of course, if you stop making the agreed-on installment payments at some point, the plaintiff can file the judgment and start procedures to collect the amount you haven't paid. Also watch out for other terms the plaintiff wants in the settlement, especially if you have not consulted an attorney. For example, you should not have to admit that you owe the money or that you have no defense. You are just agreeing that to settle the plaintiff's claim, you agree to pay the agreed amount.

If the Negotiations Hit a Sour Note

If your negotiations are going nowhere, or you're uncomfortable handling them yourself, consider hiring an attorney to negotiate for you. An attorney carries clout that might lead the collector to settle for a good deal less than you owe. But don't hire an attorney unless it's cost-effective. If a lawyer charges \$250 to negotiate a \$700 debt down to \$500, you've actually lost \$50. (See Chapter 19 for information on finding an attorney.)

Alternative Dispute Resolution

Alternative dispute resolution (ADR) refers to methods used to settle a disagreement short of going to court. If you clearly owe a debt and are looking for some way to avoid court,

most creditors won't agree to using ADR. If you really don't think you owe the money or have some other credible defense to the creditor's lawsuit, however, the creditor may agree to resolve the lawsuit through ADR.

ADR can be informal, fast, and inexpensive. Because of the informality of ADR, you generally don't have to follow formal procedural and evidentiary rules. You just tell your story. However, you should use ADR only if it is nonbinding (meaning both sides can still go to court if they don't like the result) or you are confident that the process will be fair. The following are the main ADR options.

Arbitration. This is the most formal type of ADR. You and the creditor or collector agree to submit your dispute to at least one neutral third person—often a lawyer or judge. If a lot of money is at stake, arbitrators usually let the parties use attorneys at arbitration hearings and impose formal rules of evidence. In other disputes, arbitration is less formal and can take place without lawyers. You often have to pay the arbitrator's fees in advance, and they can be high. If you win, however, you may be reimbursed.

If arbitration is voluntary and nonbinding (meaning you can appeal the decision in court if you don't like it), it can be a good thing. However, many creditors and businesses include clauses in contracts that require you to submit to binding arbitration instead of going to court. In these types of arbitration, you can rarely challenge a bad arbitration decision in court, even if the arbitrator decides not to follow the law or makes a mistake of fact. Usually, the creditor will know much more about potential

arbitrators than you and suggest ones likely to rule in favor of the creditor. If you have any defense, especially a defense based on the creditor's improper conduct, most consumer advocates believe consumers do better in court than in arbitration. If your contract requires that you go to arbitration, you may be able to get out of arbitration and go to court instead—but to do so is often complicated. You'll have to get help from a lawyer. If you are stuck with arbitration, find out as much as you can about the panel of arbitrators (the group from which your arbitrator will be selected). Look for any that might be sympathetic to consumers rather than creditors and businesses. For example, many arbitrators are also practicing lawyers—find out if they represent mostly creditors or mostly consumers.

Mediation or conciliation. This is the second-most common type of ADR. You and the creditor or collector work with a neutral third party to come up with a solution to your dispute. Mediation is informal, and the mediator does not have the power to impose a decision on you. An excellent resource on mediation is *Mediate, Don't Litigate*, by Peter Lovenheim and Lisa Guerin (Nolo, available as a downloadable book only at www.nolo.com).

Minitrial. A third option is for you and the creditor or collector to present your positions to a neutral third person who acts as a judge and issues an advisory opinion. You can agree to be bound by that opinion. A growing number of states have “rent-a-judge” programs to encourage the use of minitrials to settle disputes.

Many states encourage mediation or arbitration and encourage the court to make ADR available. These programs are usually not binding and can provide a quick way to resolve problems without battling it out in court.

If your state doesn't assign cases to mediation or another form of ADR, you can find someone to resolve your dispute yourself. Many mediators are listed in the phone book. Before hiring someone, ask for references. Call the references and find out if they were satisfied with the service. Also, the National Council of Better Business Bureaus operates a nationwide system for settling consumer disputes through arbitration and mediation. Local BBB offices handle over two million consumer disputes each year. (To find one, go to www.bbb.org, click on “Find a BBB,” then fill in your zip code.) One advantage to BBB arbitration over more formal arbitration is that it is free to consumers and is geared toward operating without lawyers.

If you would like to use ADR instead of going to court, write to the creditor and emphasize the advantages of ADR. (See “Sample Letter to Creditor Requesting Mediation,” below.) *Even if you send a letter requesting ADR, file a response to the complaint.* The creditor may say no, may say yes and then decide not to participate, or may say yes only after the time limit has passed for you to file an answer. As explained above, if the deadline passes and you haven't filed a response, the creditor can ask the court to have a default judgment entered against you. Protect yourself by filing your answer even while you're negotiating.

Sample Letter to Creditor Requesting Mediation

March 15, 20xx

Merrily Andrews, Esq.

Legal Department

Presley Hospital

900 Hollis Boulevard

Carson City, NV 88888

Re: Shawn Smith Account # 7777-SMI

Civil Case # 07-0056

Dear Ms. Andrews:

I have just been served with the Summons and Complaint for the lawsuit filed by Presley Hospital against me for \$7,400. I would very much like to resolve this matter and suggest that we mediate the dispute with the help of a mediator from the Nevada Consumer Council. I know that the Consumer Council has helped many people resolve their differences quickly, informally, and inexpensively.

Although I did not respond to your earlier collection efforts, it was not because I did not want to settle the matter. My wife and I were both very ill and hospitalized at Presley. My wife died, and taking care of my debts was not my highest priority.

I hope you'll agree to mediate this dispute. If so, please contact me by April 10, 20xx.

Respond in Court

If you want to respond to the lawsuit, you must do so in writing, within the time allowed. This means you must file formal legal papers, and that task can be difficult: Clerks may be overworked and unhelpful; they are not qualified to give legal advice, such as which of several possible forms you should choose for your situation.

This doesn't mean you can't or shouldn't represent yourself in court. You can, but you will have to educate yourself and do some legal research. You'll also need patience to play the game according to the rules. For example, if you raise an argument or a defense at the wrong time, or try to make a comment not allowed under the rules, the court may refuse to consider it.

You can also hire a lawyer to represent you in court. As you know, lawyers are expensive. But you may be able to hire a lawyer and keep your expenses down by doing some of the work yourself. Some lawyers today “unbundle” their services and will assist you with specific tasks (such as preparing an answer) or in portions of the lawsuit for less than if you hired them to defend the entire lawsuit. If you have a strong claim against the creditor that could generate substantial money for you if you win, or if the creditor may have violated a law that pays a consumer's attorney fees if the consumer wins, the lawyer may take your case on a contingent fee basis—which means you don't pay attorney fees unless you win.

In going to court, you want to raise any possible defenses you have, such as that the

statute of limitations has expired or that the goods you received were defective.

Statute of Limitations

The creditor has a limited number of years to sue you after you fail to pay your debt. This time period is set by a state law called the statute of limitations. The time allowed varies greatly from state to state and for

different kinds of debts—written contracts, oral contracts, promissory notes, or open-ended accounts like credit cards. The statute of limitations starts on the day the debt—or payment on an open-ended account—was due.

If the creditor has waited too long to sue you, you must raise this as a defense in the papers you file in response to the creditor's complaint.

Is the Account Open- or Closed-End Credit?

The statutes of limitations for open-end and closed-end credit are often different. Unfortunately, determining whether an account is open end or closed end is not always easy. Generally, if you can use the account repeatedly, it is open-end credit (also called “revolving credit”). Your payments vary, depending on how much credit you have used in a certain period of time. The most common example of open-end credit is a credit card. Closed-end credit usually involves a single transaction, such as the purchase of a house or car, and the payments are fixed in amount and number.

Many transactions fall somewhere in between open- and closed-end credit. Also, many creditors try to characterize a closed-end account as open-end, either to take advantage of a longer statute of limitations or to avoid providing the more extensive disclosures required for closed-end credit.

To complicate matters even more, the statute of limitations for an open-end account is not always clear. Some states specify limits for credit card accounts only. In others, if you have a

written contract with the credit card company, the statute of limitations for written contracts applies to credit card accounts. In still other states, the statute of limitations for oral contracts governs open-end accounts. In order to find the statute of limitations for an open-end account in your state, you'll have to do some legal research or check with a local attorney. (See Chapter 19 for help finding an attorney or for tips on doing legal research.)

EXAMPLE: Bart lives in Delaware, where the statute of limitations on open-end accounts is three years. Bart had a large balance on his Visa card, made a small payment in July 2007, and then paid no more. His August Big Bank Visa statement included a payment due date of August 15, 2007. Bart was sued in September 2010, three years and a few days after he first missed the payment. Bart has a statute of limitations defense. Bart must raise this defense in the papers he files opposing Big Bank's lawsuit. If Bart doesn't, he loses the defense.

When the Statute Has Run

Be diligent if you think the creditor has sued you after the statute of limitations has run out. It's common for credit card issuers to sell their uncollected debts to collection agencies. Those agencies aggressively try to collect, ignoring the fact that the statute of limitations may have expired. If the collection agency sues you (or threatens to sue you) once the statute of limitations has run, the agency has probably violated the federal Fair Debt Collection Practices Act (FDCPA), by either misrepresenting that you still owe the debt when it is time barred, by threatening to take an action (file a lawsuit) it cannot legally take. Whether it is a violation may depend on the legal effect of your state's statute of limitation laws.

Ordinarily, a statute of limitations does not eliminate the debt—it merely limits the judicial remedies available to the creditor or collection agency after a certain period of time. A debt collector may still seek voluntary payment of a debt so old that the law cannot force you to pay it.

In response to your claim that the statute of limitations prevents the creditor or collector from going forward with the lawsuit, the plaintiff might claim that you waived, extended, or revived the statute of limitations in your earlier dealings.

Waiving the Statute of Limitations

If you waive the statute of limitations on a debt, it means you give up your right to assert it as a defense later on. The law makes it very difficult for a consumer to waive the

statute of limitations by accident. A court will uphold a waiver only if you understood what you were doing when you agreed to waive the statute of limitations for your debt. In certain circumstances, even then a waiver may be unenforceable. If you think you may have waived the statute of limitations, you should still raise it as a defense (and force the creditor to demonstrate that you waived it).

Extending or Reviving the Statute of Limitations

Extending and reviving the statute of limitations are two different things. Extending the statute is often called “tolling.” Tolling or extending the statute temporarily stops the clock for a particular reason, such as the collector agreeing to extend your time to pay.

EXAMPLE: Emily owes the Farmer's Market \$345. The statute of limitations for this type of debt in her state is six years. Normally the statute would begin to run when Emily stopped paying the debt, but Farmer's gave her an additional six months to pay (and therefore tolled or extended the statute of limitations for six months). After six months, Emily still cannot pay the debt. The six-year statute of limitations begins to run at this point.

Reviving a statute of limitations means that the entire time period begins again. Depending on your state, this can happen if you make a partial payment on a debt or otherwise acknowledge that you owe a debt that you haven't been paying. In some states, partial payment will only “toll” the statute rather than revive it.

EXAMPLE: Ethan owes Memorial Hospital \$1,000. The statute of limitations for medical debts in his state is four years. He stopped making payments on the debt, and the four-year statute began to run. Three years later, Ethan made a \$300 payment and then stopped making payments again. In Ethan's state, his partial payment of \$300 revived the statute of limitations. The hospital now has four years from the date of the \$300 payment to sue Ethan for the remainder of the debt.

A new promise to pay a debt may also revive the statute of limitations in some circumstances. In most states, an oral promise can revive a statute of limitations, although in a few states the promise must be in writing.

Other Defenses and Claims

If you file a response in court, you should state any reason why the creditor should not recover all or part of what the complaint asks for. You state each reason either as an affirmative defense in your answer or as a separate claim, called a counterclaim, in a complaint that you file against the creditor.

An affirmative defense goes beyond simply denying the facts and arguments in the complaint (although you must do that, too, by formally denying the facts and conclusions you disagree with). An affirmative defense sets out new facts and arguments which, if proved in court, would make the creditor lose on that part of the claim. If you prove your affirmative defense,

even if what the complaint says is true, you will win or, at least, reduce the amount you owe.

Listed below are some examples of affirmative defenses you might be able to state in your answer:

- You never received the goods or services the creditor claims to have provided.
- The goods or services were defective. (See Chapter 3.)
- The creditor damaged your property when delivering the goods or services.
- The creditor threatened you or lied to you to get you to enter into the agreement. (See Chapter 3.)
- You legally canceled the contract and therefore owe nothing. (See Chapter 3.)
- You cosigned for the loan and were not told of your rights as a cosigner. (See Chapter 11.)
- The creditor was not permitted to accelerate the loan. (See Chapter 11.)
- The contract was too ambiguous to be enforced.
- The contract is illegal.
- The contract or the creditor has violated a consumer protection statute that makes the contract unenforceable. (See Chapter 3.)
- After repossessing your property, the creditor did not sell it in a “commercially reasonable manner.” (See Chapter 7.)
- The case was filed in the wrong court (wrong jurisdiction or venue).

A counterclaim is the basis of a lawsuit you have against the creditor or collector. It may be based on different issues from

Statutes of Limitations			
State	Written Contracts	Oral Contracts	Promissory Notes
Alabama	6 years	6 years	6 years
Alaska	3 years	3 years	3 years
Arizona	6 years	3 years	6 years
Arkansas	5 years	3 years	5 years
California	4 years	2 years	4 years
Colorado	6 years	6 years	6 years
Connecticut	6 years	3 years	6 years
Delaware	3 years	3 years	6 years
District of Columbia	3 years	3 years	3 years
Florida	5 years	4 years	5 years
Georgia	6 years	4 years	6 years
Hawaii	6 years	6 years	6 years
Idaho	5 years	4 years	5 years
Illinois	10 years	5 years	10 years
Indiana	10 years*	6 years	6 years
Iowa	10 years	5 years	10 years
Kansas	5 years	3 years	5 years
Kentucky	15 years	5 years	15 years*
Louisiana	10 years	10 years	5 years
Maine†	6 years	6 years	6 years
Maryland	3 years	3 years	3 years
Massachusetts†	6 years	6 years	6 years
Michigan	6 years	6 years	6 years
Minnesota	6 years	6 years	6 years
Mississippi	3 years	3 years	3 years

* For all cases other than payment of money, which is 6 years

• Except when the note is attached to a bill of sale, in which case 5 years

† The statute of limitations on a debt owed to a bank, or on a promissory note signed before a witness, is 20 years

Statutes of Limitations (cont'd)			
State	Written Contracts	Oral Contracts	Promissory Notes
Missouri	5 years**	5 years	10 years
Montana	8 years	5 years	8 years
Nebraska	5 years	4 years	5 years
Nevada	6 years	4 years	6 years
New Hampshire	3 years	3 years	3 years
New Jersey	6 years	6 years	6 years
New Mexico	6 years	4 years	6 years
New York	6 years	6 years	6 years
North Carolina	3 years	3 years	3 years
North Dakota	6 years	6 years	6 years
Ohio	15 years	6 years	15 years
Oklahoma	5 years	3 years	5 years
Oregon	6 years	6 years	6 years
Pennsylvania	4 years	4 years	4 years
Rhode Island	10 years	10 years	10 years
South Carolina	3 years	3 years	3 years
South Dakota	6 years	6 years	6 years
Tennessee	6 years	6 years	6 years
Texas	4 years	4 years	4 years
Utah	6 years	4 years	6 years
Vermont	6 years	6 years	6 years •
Virginia	5 years	3 years	5 years
Washington	6 years	3 years	6 years
West Virginia	10 years	5 years	10 years
Wisconsin	6 years	6 years	6 years
Wyoming	10 years	8 years	10 years

** Except for property transfer, which is 10 years

- Statute of limitations on a promissory note signed before a witness is 14 years

those in the complaint. You may even be asking for more money than the plaintiff wants from you. In many states, however, the counterclaim must arise out of the same transaction for which you are being sued.

Here are examples of some counterclaims you might want to make against the creditor or collector. To raise a counterclaim, you will usually have to serve and file your own complaint and pay a filing fee within the time you have to respond to the complaint. If you succeed on a counterclaim, you may be entitled to monetary damages from the creditor or collector, or at least to rescind (cancel) the contract with the creditor.

- The creditor breached a warranty. (See Chapter 3.)
- The creditor violated the Fair Credit Reporting Act (see Chapter 17), Truth in Lending Act (see Chapter 11), Electronic Fund Transfer Act (see Chapter 10), or Equal Credit Opportunity Act (see Chapter 17).
- A collection agency violated the Fair Debt Collections Practices Act or a state debt collection law. (See Chapter 9.)

Responding Formally

To avoid having the creditor or collector ask the court to enter a default judgment against you, you must file formal papers in response to the lawsuit. If you don't have access to a law library and can't afford a lawyer, just file a paper with the court saying why you oppose the lawsuit. In many states, as long as you file a paper resembling an answer, the court cannot enter a default judgment against

you. Also, you can amend your paper after you have learned more about the process.

Once you are in court, the judge may be sympathetic to someone representing himself or herself and trying to get the right to pay in installments. On the other hand, some judges have little patience for individuals who represent themselves. For this reason, it is important to be as prepared and organized as possible.

Here is one standard way to answer a complaint. However, because circumstances in each lawsuit are unique and state laws differ as to the format and requirements for complaints, use this as a general guide only. A sample answer is shown below.

- Find out if your court has a standard form you should complete for your answer. If yes, get it and use it. If not, find out if your court requires any special format, such as paper with line numbers along the edge ("pleading paper").
- Unless you have to use pleading paper, get a stack of plain white, 8½" x 11" unlined paper or turn on your computer and follow the steps below.
- Have the complaint in front of you.
- On your computer screen or a sheet of paper, in the upper-left corner, type your name, address, and phone number and the words "Defendant in Pro Per" (also called "Defendant in Pro Se" in some states; either way, it means that you represent yourself). Look at the way this is done on the complaint.
- Type the name of the court and the caption—the caption contains the name(s) of the plaintiff(s), the

word “Plaintiff(s),” “v.,” your name and any other defendants, the word “Defendant(s),” and the case number. Copy all of this information from the complaint. Place this information at approximately the same place on the page that it is on the complaint.

- Type the word “Answer” on the page in the same location as where the word “Complaint” is typed in the complaint.

Now stop typing. Go back to the complaint and read through it. Write the word “admit” near the paragraphs where you agree with *absolutely* everything said in it, such as “Plaintiff’s sporting goods store is located at 74 Hollis Road, Cranston, Rhode Island.” Anything you admit, the plaintiff does not have to prove.

Next, write the word “deny” near each paragraph in which you deny all or a part of what was said. For instance, if the paragraph says “Defendant bought a gym set and has refused to pay for it for no good reason,” and you agree that you bought a gym set but haven’t paid because it is defective and the store won’t refund your money, deny the whole paragraph.

For each paragraph where you are not sure what the truth is, but you believe the plaintiff’s statement is probably more false than true, write “deny on information and belief.” An example is if the plaintiff wrote that you bought the gym set at night, but you think it was in the afternoon.

Finally, if you have no idea whether or not the allegation in a paragraph is true, for example, a paragraph saying that plaintiff is a corporation, write “deny for lack of information.”

- Start typing again, this time double-spaced. Type the four lines below. Following each colon, type the corresponding paragraph numbers for the paragraphs in the complaint you just marked up:
 1. Defendant admits the allegations in the following paragraphs:
 2. Defendant denies the allegations in the following paragraphs:
 3. Defendant denies on information and belief the allegations in the following paragraphs:
 4. Defendant denies for lack of information the allegations in the following paragraphs:
- Next, type your statute of limitations defense (if applicable) and any affirmative defenses. Continue to number your paragraphs. See the discussions above for examples, and feel free to add a sentence or two if you feel further explanation is needed. List each defense and affirmative defense separately. Don’t worry about how many pieces of paper you need, but number the pages.
- Type your name, sign your name, and enter the date at the bottom.

Sample Answer

Judith Morrison
355 Bryce Avenue
Hackensack, NJ 07123
201-555-7890
Defendant in Pro Per

MUNICIPAL COURT FOR THE COUNTY OF BERGEN
IN AND FOR THE STATE OF NEW JERSEY

Bergen Bank, Inc.,	)	
	)	
Plaintiff,	)	
v.	)	Case No. BC—455522
	)	
Judith Morrison,	)	
Defendant.	)	
_____	)	

ANSWER

- 1. Defendant admits the allegations in the following paragraphs: 1, 2, 3, 4, 7, 9, 16, 22, and 23.
- 2. Defendant denies the allegations in the following paragraphs: 5, 6, 8, 12, 13, 14, 15, 17, 24, and 26.
- 3. Defendant denies on information and belief the allegations in the following paragraphs: 10, 11, 19, 20, 21, and 25.
- 4. Defendant denies for lack of information the allegations in the following paragraphs: 18, 27, and 28.
- 5. Defense: Plaintiff is not entitled to the money it claims because the applicable statute of limitations has run.

Sample Answer (cont'd)

6. First Affirmative Defense: I canceled the contract as I was entitled to and therefore I owe nothing.

7. Second Affirmative Defense: Clause 14 of my loan agreement prohibits the creditor from accelerating the loan. In violation of Clause 14, the creditor has accelerated the loan and now claims the entire balance is due.

Judith Morrison
Judith Morrison

June 17, 20xx
Date

What to Expect While the Case Is in Court

Once you type up your answer and any counterclaim, you'll have to sign it and have someone else serve a signed copy of it on the plaintiff. You can usually serve the plaintiff by having a friend over the age of 18 send the plaintiff your papers through the mail. However, sometimes it must be done in person. Details on serving your answer and counterclaim vary considerably from state to state, but see if your court clerk provides instructions, or check a local law library for the rules. (See Chapter 19.)

After your papers are served, you must file the original papers at the court by the deadline. The court will stamp the original (and one or more copies you bring) to say when it was filed. You must also file a “proof of service,” a document that shows that the plaintiff was served in the proper manner. (See the sample, below.) It should be signed by the person who served the answer, not by you or any family member. Keep file-stamped copies for yourself. Do not file originals of things that could be evidence, such as receipts, checks, contracts, or collection letters. Keep those for the hearing (although you should make photocopies of them for later).

After your papers are filed, you will receive written notification of all further proceedings in your case. If yours is a routine debt collection case, the next paper you will probably receive is a notice of the plaintiff's request for a trial and date. The paper after that will probably be a notice of the trial date. In some courts, however,

you will be sent a notice of a settlement conference before the trial date. Be sure to attend the settlement conference or trial. If you move, make sure you notify the plaintiff and court of your address change.

If yours isn't a routine debt collection case, or the creditor's lawyer wants to play the litigation game, a whole lot can go on between the time you file your answer and any counterclaim and the time you get a notice of the trial. You may want to take the offensive with some of this, especially if you filed a counterclaim. Below is a brief description of the most common of these proceedings. It's difficult for someone without a lawyer to undertake them, but it's not impossible. These descriptions are not meant to be a detailed account of how to cope with court procedures. For that, you'll want to look at *Represent Yourself in Court*, by Paul Bergman and Sara Berman (Nolo).

Discovery

Discovery refers to the formal procedures used by parties to obtain information and documents from each other and from witnesses. The information is meant to help the party prepare for trial or settle the case. In routine debt collection cases where you don't have any defense, don't expect the plaintiff to engage in discovery. Discovery can be expensive, and, quite frankly, there is often nothing for the plaintiff to “discover.” You owe the money. You haven't paid.

If you raise a strong affirmative defense or file your own counterclaim, however, you and the plaintiff may want to engage in

Sample Proof of Service

Judith Morrison
 355 Bryce Avenue
 Hackensack, NJ 07123
 201-555-7890
 Defendant in Pro Per

MUNICIPAL COURT FOR THE COUNTY OF BERGEN

IN AND FOR THE STATE OF NEW JERSEY

Bergen Bank, Inc.,	)	
	)	
Plaintiff,	)	
v.	)	Case No. BC—455522
	)	
Judith Morrison,	)	
Defendant.	)	
_____	)	

PROOF OF SERVICE

I, Gordon Freed, declare that:

I am over the age of 18 years and not a party to the within action. I reside [or am employed] in the County of Bergen, State of New Jersey. My residence [or business] address is 56 Trainor Court, Englewood, New Jersey.

On June 22, 20xx, I served the within ANSWER on the plaintiff by placing a true and correct copy of it in a sealed envelope with first-class postage fully prepaid in the United States mail at Englewood, New Jersey, addressed as follows:

Deb Miles, Esq.
 Bergen Bank, Inc.
 1400 Fort Lee Circle
 Fort Lee, New Jersey 07333

Sample Proof of Service (cont'd)

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 23, 20xx, at Englewood, New Jersey.

Gordon Freed
Gordon Freed

discovery. Here are brief definitions of the primary discovery methods.

Deposition. A proceeding in which a witness or party is asked to answer questions orally under oath. A court reporter is present and takes down the entire proceeding. If you schedule a deposition of someone, you will probably have to pay for the court reporter, which can be very expensive.



RESOURCE

Need more information on

depositions? If you receive papers ordering you to appear at a deposition, get a copy of [Nolo's Deposition Handbook](#), by Paul Bergman and Albert Moore (Nolo).

Interrogatories. Written questions sent by one party to the other to be answered in writing under oath.

Request for production of documents. A request from one party to the other to hand over certain defined documents. If you are adamant in your defense of a lawsuit that you paid the debt, the other side will most likely request that you produce for inspection (and copying) a check, money order receipt, or other document supporting your assertion.

Request for admissions. A request from one party to the other to admit or deny certain allegations in the lawsuit.

Request for inspection. A request by one party to look at tangible items (other than writings) in the possession of the other party. For instance, if you raise as an affirmative defense that the painter who sued you spilled paint on your rug and it cannot be removed, the painter may request to inspect the rug.

Request for physical examination. A request by one party that the other party be examined by a doctor if the other party's health is at issue.

Subpoena. An order telling a witness to appear at a deposition.

Subpoena duces tecum. An order telling a witness to bring certain documents to a deposition or hearing.

In some states, the trend is toward limiting discovery. For example in some states, parties to a lawsuit can ask only a limited number of questions in their interrogatories and a party or witness can be deposed only once. If the creditor sends you volumes of interrogatory questions or schedules your deposition after it's already been taken, you can ask the court to issue a "protective order" to stop the harassment.

Be sure to answer discovery requests in the time allowed, even if it's just to say you don't know the answer. Otherwise, the plaintiff may ask the court to compel you to answer and to pay costs for their trouble. Or you may be deemed to have admitted the plaintiff's assertions ("requests for admissions"). If the plaintiff (or its attorney) agrees to let you have more time to answer, get it in writing. Send a letter confirming the extension of time to the plaintiff (or its attorney).

Summary Judgment

The creditor may try to convince the judge that none of the facts of the case are in dispute—for example, that you signed a legal loan agreement, made no payments, and have no defense as to why you're not paying. The creditor also must convince the judge

that the plaintiff is entitled to judgment as a matter of law. The creditor does this by filing a summary judgment motion. If the judge agrees with the creditor, the judge can enter a judgment against you without any trial taking place. The creditor should not win if there are any material (important) facts in dispute (for example, if you claim you didn't sign the agreement).

You usually must file papers opposing the creditor's summary judgment motion if you want to fight it. If you don't, you'll probably lose. Because responding to a summary judgment motion can be complicated, and because the entire lawsuit is at stake, you may want to consult with an attorney. Of course, remember what we said earlier: If it costs more to hire a lawyer than what the creditor seeks in the lawsuit, it makes little sense to seek attorney assistance.

Settlement Conference

Several states and the federal court system require that the parties come together at least once before the trial to try to settle the case. To assist you in settling, you'll be scheduled to meet with a judge or attorney who has some familiarity with the area of law your case involves. You don't have to settle, but the judge or attorney will usually give you an honest indication of your chance of winning in a trial.

Trial

The vast majority of cases do not go to trial. They settle or end in summary judgment or

Some Guidelines on Presenting Evidence

You can testify only as to facts in your knowledge. Usually, you can't testify that "someone told you" something or even about something you said outside the court (this is hearsay). There are many exceptions to the general rule against hearsay evidence. Important exceptions usually allow you to testify about what the plaintiff or its employees told you or what you told them. For example, you could testify about what the plaintiff's advertisements said if you contend they were misleading or that the plaintiff told you it would accept smaller payments.

Bring all relevant documents—receipts, bills, letters, warranties, advertisements, and the like. Try to bring originals, but if you only have copies, bring them. Bring four extra copies of each document (one for the opposing lawyer, one for the witness, one for the court clerk, and one for the judge). Be sure that you have the original (or a copy) for your own use.

Your witnesses can testify only to facts in their knowledge—that is, something they saw or heard. For example, if a bill collector threatened to have you jailed, a witness testifying about the truth of this statement can testify only that she heard the threat, not that you called and told her about the threat.

a similar proceeding. But once discovery is complete, any summary judgment motion is denied, and settlement efforts have gone nowhere, you will eventually find yourself at a trial. In a trial, a judge makes all the legal decisions, such as whether or not a particular item of evidence can be used. Either a judge or a jury makes the factual decisions, such as whether or not the item sold to you was defective.

At the trial, you will be required to present your case according to very specific rules of procedure and evidence. As mentioned before, the book that can help you in any trial is *Represent Yourself in Court*, by Paul Bergman and Sara Berman (Nolo). Or, you may want to consult with a lawyer before the trial to get some help.

When the Creditor Gets a Judgment Against You

Your creditor will get a judgment against you in any of the following situations:

- You don't respond to the complaint.
- You don't comply with a judge's order to respond to a discovery request.
- You lose a summary judgment motion.
- You lose a trial.

The judgment is a piece of paper issued by the court stating that the plaintiff wins the lawsuit and is entitled to a certain amount of money. The judgment must be "entered"—that is, filed with the court clerk—and this usually happens a day or two after the judge issues it. After it is filed, the court or the creditor's attorney sends you a copy.

Components of a Money Judgment

When you get a copy of the judgment, your first step is to understand the amount of money to which the plaintiff is entitled and what each portion represents. Keep in mind that the judge may have knocked off some money in response to a defense or counterclaim you raised.

A judgment usually consists of the following components:

The debt itself. This is the amount of money you borrowed from the creditor, charged on a credit card, or owe on a repossession deficiency balance.

Interest. Part of the judgment will be the interest the creditor is entitled to collect under the loan agreement or contract. If you defaulted on a \$1,000 loan at 9% annual interest and the creditor obtains a judgment a year later, the court will award the creditor \$90 in "prejudgment" interest ($\$1,000 \times .09 = \90).

Interest can be added after judgment from the time the judgment is entered into the court clerk's record until you pay the judgment in full. Unless the contract sets the interest rate, the postjudgment interest rate is set by your state's law, generally in the 8% to 12% range.

Court costs. Almost every state awards the winner of a lawsuit the costs incurred in bringing the case, including filing fees, service costs, discovery costs, and jury fees.

Attorneys' fees. If your original contract with the creditor includes the creditor's right to collect attorneys' fees in the event the creditor sues you and wins, these fees will be added to the judgment. They can add up to thousands of dollars. Even without an

attorneys' fees provision in a contract, the creditor may be entitled to attorneys' fees if a state law allows it.

How Long Judgments Last

Depending on the state, a creditor may have from five to as many as 20 years to collect a court judgment. In addition, in most states, the judgment can be renewed for a longer time, and in some states, indefinitely, if it is not collected during the original period, so the creditor may have an unlimited amount of time to collect a judgment.

Enforcing Judgments in Different States

Sometimes a creditor obtains a judgment against you in a state where you do not live. This can happen if you have moved since the debt was incurred, if you signed a contract in another state, or if the contract specified another state for suing to enforce the contract and you were not able to get the location changed. Or, you may own property or have assets outside the state where the judgment was obtained. The creditor can go into court in the state where you now live or have assets and register the original out-of-state judgment. This means the creditor now has the right to use all the judgment remedies available in the state where you now live or have assets (the second state).

How Judgments Are Enforced

Once a judgment is entered against you, the creditor is now called a judgment

creditor, and you are called a judgment debtor. Judgment creditors have many more collection techniques available to them than do creditors trying to collect debts before getting a court judgment. For example, in some states, a judgment creditor can order you to come to court and answer questions about your property and finances. Also, a judgment creditor can direct a sheriff to seize some of your property to pay the judgment.

What property the creditor can take varies from state to state. Usually, the creditor can go after a portion of your net wages (up to 25%, more if the judgment is for child support), bank and other deposit accounts, and valuable personal property, such as cars and antiques.

Not all of your property can be taken, however. Every state has certain property it declares "exempt." This means it is off limits to your creditors, even judgment creditors. Just because you owe money, you shouldn't have to lose everything. You still need to eat, keep a roof over your head, clothe yourself, and provide for your family. If you have very few possessions, you may find that most of what you own is exempt. Exempt property is covered in Chapter 16.

Debtor's Examination

Most states let a judgment creditor question you about your property and finances, in a procedure called a "debtor's examination." Basically, the judgment creditor is looking for money or property that can be legally taken to pay the debt. High on the list of property the creditor looks for are deposit accounts (such as savings, checking, certificate of

deposit, and money market), tax refunds due, and other easy cash. Don't lie. Your statements are ordinarily given under penalty of perjury.

Written Questions

In some states, a judgment creditor sends you a form and asks you to fill it out, listing your employer's name and address, your assets, and other financial information. You must do this under penalty of perjury. If you don't comply or the judgment creditor believes you're lying or not disclosing all relevant information, the judgment creditor can ask the court to issue an order requiring you to come to court and answer the questions.

Court Appearance

In other states, the creditor serves you with a document ordering you to show up in court and bring certain financial documents, such as bank statements or pay stubs. You may be sent the questions and given a chance to answer them in writing first. If you receive an order to appear in court and you don't show up, the court can declare you in contempt and issue a warrant for your arrest.

In a few states, if the judge issues an order for you to come to court, serving that order on you creates a lien on your personal property. The lien may make it difficult for you to sell the property without first paying the judgment. Also, in some states if the judgment creditor believes you are about to leave the state or conceal your property to avoid paying the judgment, the creditor can ask the judge to issue a warrant for your immediate arrest. This is quite drastic, but it's

been known to happen when a lot of money is owed.

If you receive an order to appear but can't take the time off from work or otherwise can't make it, call the judgment creditor or the lawyer and explain your situation. Explain that you're willing to answer questions over the phone or even in person, but at another time. If the creditor thinks you're telling the truth and hasn't already sent you a form about your finances and property, the creditor may take the information over the telephone.

If the judgment creditor agrees to change the date or to let you answer the questions over the phone, ask for a letter to you and the court verifying that you need not appear at the hearing. If the creditor won't write the letter, write your own letter confirming your conversation. Send it to the creditor and to the court.

If you can attend the hearing, or you reschedule it to a convenient time, do not take any money or expensive personal items with you. The judgment creditor can ask you to empty your pockets or purse and ask the court to order you to turn over any nonexempt money or valuable personal property in your possession, such as a college ring or leather jacket.

Wage Attachments

The first item of your property most judgment creditors will go after is your paycheck, through a wage attachment (or wage garnishment). A wage attachment is a very effective technique for a judgment creditor if you receive a regular paycheck.

Your employer takes a portion of your wages each pay period and sends that money to your creditor before you ever see it.

Federal law allows the judgment creditor to take up to 25% of your net earnings or the amount by which your weekly net earnings exceed 30 times the federal minimum wage (currently \$7.25 an hour times 30, equals \$217.50), whichever is less. Net earnings are your gross earnings less all legally mandated deductions, such as withheld income taxes and unemployment insurance.

A few states offer greater protections for judgment debtors about to lose their wages.



CAUTION

For certain debts, you have to pay more. The wage attachment laws and limitations described in this section do not apply to:

- **Child support.** Up to 50% of your wages may be taken to pay support (more if you don't currently support another dependent or are behind in your payments). Your child's other parent usually does not have to first sue you.
- **Income taxes.** If you ignore all attempts by the IRS to collect taxes you owe, the government can grab virtually all of your wages. The weekly garnishment amount (called a levy) is based on the standard income tax deduction, plus the amount for each personal exemption you are entitled to on the income tax form, divided by 52 weeks. If you don't verify the standard deduction and how many dependents you would be entitled to claim on your tax return, the IRS bases the levy on the standard deduction for a married person

filing separately, with only one personal deduction—a very low amount. For 2010, that could have left you with as little as \$179 a week. (26 U.S.C. § 6334(d).)

Can You Be Fired for a Wage Attachment?

Your employer may consider a wage attachment a hassle and may threaten to fire you if you don't settle the debt right away. Under the law, however, an employer cannot fire you because your wages are attached to satisfy a single debt. (15 U.S.C. § 1674(a).) But, if two judgment creditors attach your wages or one judgment creditor attaches your wages to pay two different judgments, this law does not protect you from being fired. Some states protect you until you have three or more attachments; find out how to research your state's law in Chapter 19.

Most employers will work with employees who are honestly trying to clear up their debt problems. If your wages are attached, talk with your employer and explain that you are working hard to settle the matter as soon as possible. If, however, you are fired because your employer was not aware of the law or because your employer was "suddenly" unhappy with your work, consider filing a complaint. (See Chapter 19 for tips on finding a lawyer.)

To attach your wages, a judgment creditor obtains authorization from the court in a document usually called a writ. Under this authorization, the judgment creditor directs

the sheriff to seize a portion of your wages. The sheriff in turn notifies your employer of the attachment, and your employer notifies you. Unless you object, your employer sends the amount withheld each pay period to the sheriff, who deducts his or her expenses and sends the balance to the judgment creditor.

You can object to the wage attachment by requesting a court hearing. In some states, the attachment can't begin until after the hearing, unless you give up your right to a hearing. In most states, however, as long as you have the opportunity to have your objection promptly considered, the attachment can take effect immediately.

Property Liens

One collection device commonly used by judgment creditors is the property lien. In about half the states, a judgment entered against you automatically creates a lien on the real property you own in the county where the judgment was obtained. In the rest of the states, the creditor must record the judgment with the county, and then the recorded judgment creates a lien on your real property. In a few states, the lien is on your real and personal property. Liens have a lifespan of a few to several years.

If a judgment creditor does not get a lien on personal property after the judgment is entered or recorded, the judgment creditor may be able to get a lien on your personal property by recording the judgment with the secretary of state. This usually applies only to property with title papers, such as a car or a business's assets. If, for example, you tried to sell your car, the lien would appear, and

you'd have to pay off the judgment creditor before selling.

Once the judgment creditor has a lien on your property, especially your real property, the creditor can safely anticipate payment. When you sell or refinance your property, title must be cleared—that is, all liens must be removed by paying the lienholder—before the deal can close.

Instead of waiting for you to sell your property, the creditor can “execute” on the lien. That means having the sheriff seize your property—typically a house—and arrange for a public sale from which the creditor is paid out of the proceeds. However, if your property is exempt, the creditor cannot do this. Even if your property is not exempt, many creditors don't want to go through the expense and hassle of a public sale. This is especially true if the creditor won't get much money through the sale. Any mortgage holder, government taxing authority, or other creditor who placed a lien on your property before the judgment creditor will be paid first. Then you get any homestead exemption to which you are entitled. (See Chapter 16.) Only then does the judgment creditor get his or her share.

EXAMPLE: Lin lives in Wisconsin and owns a house worth \$200,000. Child-Aid Medical Clinic obtained a judgment against Lin for emergency treatment of his daughter for \$2,500 and, consequently, got a lien on Lin's house. Child-Aid considers seizing his house to sell it and be paid but realizes that it won't get any money because:

- Lin owes \$125,000 on his first mortgage.
- Lin owes \$23,000 on a home equity loan.
- Lin owes the IRS \$17,000 on a tax lien.
- Lin's homestead exemption is \$40,000.

These items total \$205,000, more than the value of Lin's house.

A creditor who places a judgment lien on your property must do so according to the rules in your state for judgment liens. It's not unusual for creditors to make mistakes, which may make the lien unenforceable. You might have a defense against a creditor's attempt to execute on a lien because the lien is too old or because it was not properly handled. You'll need to consult with an experienced consumer attorney if you suspect that the lien was placed inappropriately or too long ago. See "Stopping Judgment Collection Efforts," below, for additional reasons the lien may not be enforceable.

Property Levies

A judgment creditor can get a "writ of execution" from the court and go after your personal property by instructing the sheriff or marshal to "levy" on it. "Levy" basically means that the officer takes the property (your baseball card collection, for example) or instructs the holder of the property (your bank, for example) to turn it over to the officer. After taking your property, the sheriff or marshal sells it at public auction

and applies the proceeds to your debt. In the case of a bank account, the amount taken from your account is applied to your debt. You must be notified any time the sheriff or marshal levies against your property. You can request a hearing to show that the property is exempt or that the seizure will cause you financial hardship.

Here is how the levying process generally works:

1. The judgment creditor gets a court order authorizing a levy on your property. This order is usually called a writ of execution.
2. The judgment creditor directs the sheriff to seize (levy on) a particular asset, such as your car.
3. The sheriff comes to your home. If you are present, the sheriff explains that he or she has an order to take a particular item of your property to sell to pay off your debt. You do not have to let the sheriff into your home, however, unless the sheriff has a special court order allowing entry.
4. If you aren't home or don't cooperate, the sheriff can use a duplicate car key or hotwire a car, as long as it is not in a locked garage. Stay calm; in most states you can be arrested for interfering with the sheriff. The sheriff can't enter your house without your authorization to take other property without a special court order allowing entry. But again, if the sheriff insists on entering anyway, don't interfere.
5. The sheriff puts the item into storage.
6. If you don't file an objection (often called a "claim exemption") within the

time allowed by your state, the sheriff will put the item up for sale.

7. After the sale, the proceeds are used to pay whatever you still owe the original lender, then to pay the sheriff's costs (seizing, storage, and sale), and then to pay the judgment. If the sale doesn't cover all of what you owe, the judgment creditor can still come after you for the rest.

Assignment Orders

An assignment order lets creditors go after property you own that can't be subjected to a levy, such as an anticipated tax refund, the loan value of unmaturing life insurance, or an annuity policy. Independent contractors and other self-employed people who have no regular wages to be garnished are particularly susceptible to an assignment order against their accounts receivable.

An assignment order is straightforward: The judgment creditor applies to the court for an order prohibiting you from disposing of money you have a right to receive—such as a tax refund, insurance loan, royalties, dividend payments, or commissions. You are given the date and time of the court hearing and an opportunity to oppose issuance of an assignment order. If the creditor gets the order, the creditor serves it on whomever holds your money. When payment to you comes due, the money is sent to the judgment creditor instead.

Contempt Proceedings

Sometimes, a judgment issued by the court will include a schedule for installments

or periodic payments. In a few states, if a judgment doesn't include such a schedule, the judgment creditor can go back to the court and ask the judge to make an order requiring periodic payments on a debt.

If you violate a court order, the creditor can seek a contempt order. In a handful of states, if a judge issues an order requiring periodic payments on a debt and you miss any payments, the judge can hold you in contempt. You could be fined, sentenced to community service, or, in theory, at least, the judge could issue a warrant for your arrest and you could be jailed.

As you might hope, arresting a debtor on this kind of warrant is usually a very low priority for law enforcement agencies, and in most situations, the warrants become old and moldy without anyone being arrested. But the threat of arrest and jail can be a serious incentive for many judgment debtors to send a check ASAP.

Stopping Judgment Collection Efforts

Having your property taken or your wages attached can be devastating. It's miserable enough to owe money; it's worse to have your creditors take what little property you may have left.

Fortunately, in many situations you can still take steps to try to head off collection efforts. The process of trying to grab property to pay a judgment can be quite time-consuming and burdensome for a judgment creditor. Also, the creditor might fear that you'll lose or quit your job due to

a wage attachment, or that you'll file for bankruptcy. None of that would help the creditor get paid.

It's never too late to negotiate. A judgment creditor who receives a reasonable offer to pay will often stop a lien, levy, wage attachment, garnishment suit, or assignment order. (For tips on negotiating, see Chapters 5 and 9.) Or, consider contacting a debt counseling agency for help in negotiating and setting up a repayment plan. (See Chapter 19.)

Most important, just because a judgment creditor levies on your property or attaches your wages, it doesn't mean that the creditor is entitled to take the property. Every state exempts certain property from creditors. This means that creditors simply cannot have that property, no matter how much you owe. In addition, you may be able to keep property that isn't exempt if you can prove to the court that you need it to support yourself or your family.

Exempt property is described in detail in Chapter 16. In most states, your clothing, furniture, personal effects, and public benefits can't be taken to pay a debt. Nor can some of the equity in your car and house, most of your wages, and most retirement pensions. Charts for each state are in Appendix C. What follows is a discussion on how to claim that your property is exempt (or that you need nonexempt property) when the judgment creditor pursues a lien, levy, wage attachment, or assignment order.

Any time the sheriff or marshal levies against your property, you must be notified. You can request a hearing, which is usually called something like a claim of exemption hearing, to argue that it will be a financial

hardship on you if the property is taken, or that your property is exempt under state law. If you lose that hearing and your wages are attached, you can request a second hearing if your circumstances have changed, causing you hardship (for example, you have sudden medical expenses or must make increased support payments).

Debts for Necessities

In most states, you cannot request a claim of exemption to protect your wages if your debt was for basic necessities, such as rent or mortgage, food, utilities, or clothing. The law says that you should pay for your necessities, even if you suffer a hardship in doing so.

Still, you can request a claim of exemption hearing if the debt (now part of the judgment) was for a basic necessity. The creditor may not challenge your claim. Or, the judge might not care whether the debt was for a basic necessity and may consider only whether or not you need the money to support your family.

Here is an overview of how a claim of exemption hearing normally works:

1. When your employer notifies you of a wage attachment request, or you are notified of a property levy (such as a bank account attachment) or an assignment order, you will be told in writing how to file a claim of exemption—that is, how to tell the judgment creditor you consider the property unavailable. The time period

in which you must file your claim is usually short and strictly enforced—don't miss it.

2. Complete and send a copy of your claim of exemption to the judgment creditor. In some states, you'll also have to serve it on the levying officer, such as the sheriff. The judgment creditor will probably file a challenge to your claim. The judgment creditor may abandon the attachment, levy, or assignment order, however, if it's too expensive or time-consuming to challenge you. If the creditor does abandon it, your withheld wages or taken property will be returned to you.
3. If the judgment creditor doesn't abandon the attachment, levy, or assignment order, the creditor will schedule a hearing before a judge. If you don't attend, you'll probably lose. On the day of the hearing, come early and watch the way the judge handles other cases. If you're nervous, visit the court a day earlier to get accustomed to the surroundings.
4. At the hearing, you'll have to convince the judge that your property is exempt or that you need it to support yourself or your family. This is your opportunity to defend yourself from

having your wages or other property taken. You must do all that you can to prepare for this hearing if you want to keep your property.

For example, if the creditor tries to take your "tools of trade," which are exempt to a certain value in most states, bring along someone who works in your occupation. A supervisor, union boss, or shop leader can say that you use the items in your job. You'll need to show that the items' value does not exceed the exemption amount. If you have high income one month, bring in pay stubs to show that you usually make less. Or, if your bills are higher than average, bring copies. Think carefully about your income and financial situation. There may be other creative but truthful ways to show the judge that your property is exempt or necessary to support yourself or your family.

5. The judge will listen to both you and the judgment creditor, if the judgment creditor shows up. Sometimes the judgment creditor relies on the papers already filed with the court. The judge may make a ruling or may set up an arrangement for you to pay the judgment in installments.



Bankruptcy: The Ultimate Weapon

Kinds of Bankruptcy.....	303
Filing for Bankruptcy Stops Your Creditors.....	304
Chapter 7 Bankruptcy.....	307
How Chapter 7 Works.....	307
Who Can File for Chapter 7 Bankruptcy.....	309
Chapter 13 Bankruptcy.....	311
Will Bankruptcy Solve Your Debt Problems?.....	312
What Bankruptcy Can Do.....	313
What Bankruptcy Can't Do.....	313
What Only Chapter 13 Bankruptcy Can Do.....	314

“Thou whom avenging powers obey. Cancel my debt (too great to pay). Before the sad accounting day.”

—Wentworth Dillon,
English poet and translator,
1633–1685

Bankruptcy might be the ultimate solution to your debt problems. For a court filing fee of \$274 or \$299 and the cost of a do-it-yourself law book, many people can wipe out (discharge) all—or a good portion—of their outstanding debts. But deciding whether to file for bankruptcy isn't easy. You need to understand the different types of bankruptcies and what bankruptcy can and cannot do for you.

As you may have heard, Congress enacted major changes to the bankruptcy laws a few years ago. But most people who want to use Chapter 7 bankruptcy are still eligible to file.

To figure out if bankruptcy is the way to go, you will first need to get together information about your assets and debts, as explained in this chapter and Chapter 16. When you have your facts together, even if you think you may want to file your own bankruptcy, you may want to consult with an experienced consumer bankruptcy attorney before you decide whether to file, which kind of bankruptcy to file, and whether to file it yourself or get help from an attorney.

The U.S. Bankruptcy Courts warn: “It is very important that a bankruptcy case be filed and handled correctly. The rules are very technical, and a misstep may affect a debtor's rights. For example, a debtor whose case is dismissed for failure to file a required

document, such as a credit counseling certificate, may lose the right to file another case or lose protections in a later case, including the benefit of the automatic stay. Bankruptcy has long-term financial and legal consequences—hiring a competent attorney is strongly recommended.” If you do plan to file yourself, go to the Bankruptcy Court's website for more information: www.uscourts.gov/bankruptcycourts.

Whatever you do, watch out for companies advertising that they can help you file your bankruptcy or can file it cheaper than an attorney. Nonattorney “petition preparers” legally can only type information on bankruptcy forms. They are barred by law from providing legal advice; they cannot explain how to answer legal questions or assist in bankruptcy court. Some of these businesses may claim they can handle a bankruptcy for you, but they cannot legally do so and don't have the expertise you need. Some companies may file a few pages, but not file other required documents, or fail to complete the bankruptcy, which can cause you to lose the right to file another case or lose protections in a later case.



RESOURCE

Nolo's bankruptcy resources.

- *The New Bankruptcy: Will It Work for You?* by Stephen Elias, contains all the information you need to figure out if bankruptcy is right for you, and, if so, which type of bankruptcy case you should file.
- *How to File for Chapter 7 Bankruptcy*, by Stephen Elias, Albin Renauer, and Robin Leonard, contains all the forms and

instructions necessary for you to file for Chapter 7 bankruptcy.

- *Chapter 13 Bankruptcy: Keep Your Property & Repay Debts Over Time*, by Stephen Elias and Robin Leonard, contains all the information you need to file for Chapter 13 bankruptcy on your own.

Famous Bankruptcy Filers

Samuel Clemens (aka Mark Twain) lost everything he invested in a typesetting machine that was made obsolete before it could be commercially manufactured.

Milton Hershey filed for bankruptcy for each of his first four candy companies.

Henry Ford filed for bankruptcy for his first company before founding Ford Motor Co.

MC Hammer listed millions in debts to friends, interior designers, and lawyers when he filed for bankruptcy six years after releasing a hugely successful album.

Willie Nelson owed millions in back taxes when he filed for bankruptcy.

Walt Disney filed for bankruptcy in the early 1920s, when he had formed his first cartoon company and his main client couldn't pay his bills.

- Chapter 13 bankruptcies (for individuals)
- Chapter 11 bankruptcies (for businesses and for individuals with unusually high debts), and
- Chapter 12 bankruptcies for family farmers.

This chapter addresses only Chapter 13 and Chapter 7 bankruptcies for individuals.

In a Chapter 7 bankruptcy, you ask the court to erase your debts completely. In exchange, you must give up your nonexempt property or its equivalent in cash or other property.

In a Chapter 13 bankruptcy, you set up a court-approved plan to repay all or part of your debts. Under the plan, you make monthly payments to the bankruptcy court for three to five years. The court in turn pays your creditors a percentage of the money they are owed. Under the plan, you usually must use all of your disposable income to pay off your debts. In addition, your unsecured creditors must receive at least as much as they would have received had you filed for Chapter 7 bankruptcy—that is, the value of your nonexempt property. Some creditors, however—such as a former spouse to whom you owe alimony—are entitled to receive 100% of what you owe. In Chapter 13 bankruptcy, you usually will not be required to give up any property.

If you're deeply in debt, bankruptcy may seem like a magic wand. And it is powerful. But it has its drawbacks, too. First, it's intrusive. A court-appointed person, the bankruptcy trustee, must approve almost all financial transactions you make while your bankruptcy case is open. For a Chapter 7 bankruptcy, this period can last three to

Kinds of Bankruptcy

Congress has devised two kinds of bankruptcy: liquidation and reorganization. Liquidation bankruptcy is called Chapter 7 and can be filed by either individuals or businesses. There are three different reorganization bankruptcies:

six months. For a Chapter 13 bankruptcy, it can be as long as five years. Second, bankruptcy can cause practical problems, especially a Chapter 7 bankruptcy, because you might have to surrender property you desperately want to keep. Also, bankruptcies don't get rid of all debts, such as student loans and some tax debts, and depending how far behind you are on your mortgage payments, a bankruptcy may not be able to save your home. Finally, bankruptcy can be depressing—some people would rather struggle along under mountains of debt than be labeled bankrupt.

You may also be concerned about your credit rating. Credit reporting agencies can report bankruptcies on your credit record for ten years. But you can take steps to start rebuilding your credit almost immediately. (Chapter 17 explains how to do this.) And you'd be surprised at how quickly new credit card offers will come in the mail after your bankruptcy. Some credit card companies are more than willing to extend credit to people who have recently completed a bankruptcy. They assume that given your track record, you're likely to carry a balance on the card (which means more money for them in the form of interest) and won't be able to discharge any debt for another eight years.

It will take longer to qualify for other types of credit, like mortgages or car loans. But most people who pay their bills on time for two to three years after completing a bankruptcy are able to get other types of loans. If you demonstrate responsible handling of your finances, FHA home loans, for example, are available to consumers two years after a Chapter 7 bankruptcy and after

one year of making payments on a Chapter 13 bankruptcy.

Filing for Bankruptcy Stops Your Creditors

One of the most powerful features of bankruptcy is that it stops most debt collectors in their tracks and keeps them at bay for the rest of your case. Once you file, all collection activity (with a few exceptions, explained below) must go through the bankruptcy court, and most creditors cannot take any further action against you directly.



TIP

You don't need bankruptcy to stop your creditors from harassing you. Many people start considering bankruptcy when creditors start phoning them at home and at work. As explained in Chapter 9, however, federal law prohibits this activity by debt collectors once you tell them, in writing, to leave you alone.

When you file for any type of bankruptcy, something called the “automatic stay” goes into effect. The automatic stay stops, or “stays,” creditors and collection agencies from taking any action to collect most kinds of debts you owe, unless the law or the bankruptcy court says they can.

- **Credit card debt, medical bills, and attorney fees.** All efforts to collect these types of debts must stop. Creditors may not file a lawsuit or proceed with a lawsuit that's already pending, record liens against your property, seize your

Don't Feel Guilty

Some people feel ashamed at the prospect of filing for bankruptcy. But bankruptcy has been around for a long time, with good reason: It provides a necessary safety net for people who need to regain their financial footing and get a fresh start.

Over 1,500,000 individuals and couples filed for bankruptcy in the year ending on June 30, 2010. Studies show that the most common reasons for these bankruptcies are:

- medical expenses (about half of all consumer bankruptcies)
- job loss, followed by an inability to find work that pays nearly as well
- divorce or legal separation, and
- small business failures.

The American economy is based on consumer spending. More than 70% of the gross domestic product comes from spending for consumer goods and services. As Americans, we learn almost from birth that it's a good thing to buy all sorts of things. A highly paid army of persuaders surrounds us with thousands of seductive messages each day that all say, "buy, buy, buy."

Readily available credit makes it easy to live beyond our means. And, if we do fall behind, fees and sky-high interest rates quickly increase the debt. If, because of illness, loss of work, or just plain bad planning, it becomes clear that we

won't be able to pay it all off, feelings of fear and guilt are often our first responses. But as we've also seen, the American economy depends on our spending—the more, the better. In short, much of American economic life is built on a contradiction.

In this age of multibillion-dollar bailouts for poorly managed financial institutions, should you really feel guilt-ridden about the debts you've run up? That's something only you can decide, but remember that large creditors expect defaults and bankruptcies and treat them as a cost of doing business. The reason banks issue so many credit cards is that it is a very profitable business, even though some credit card debt is never repaid.

Bankruptcy is a truly worthy part of our legal system, based as it is on forgiveness rather than retribution. Certainly, it helps keep families together, frees up income and resources for children, reduces suicide rates, and keeps the ranks of the homeless from growing even larger. And, perhaps paradoxically, every successful bankruptcy returns a newly empowered person to the ranks of the "patriotic" consumer. If you suddenly find yourself without a job; socked with huge, unexpected medical bills you can't pay; or simply snowed under by an impossible debt burden, bankruptcy provides a chance for a fresh start and a renewed, positive outlook on life.

property or income to pay the debt, intercept your income tax refund to pay a student loan, or even report the debt to a credit bureau, if reported for the purpose of attempting to collect a debt. Incorrect information reported on the debt is particularly likely to be considered a violation of the stay.

- **Public benefits.** Generally, government agencies seeking to collect overpayments of public benefits, such as SSI, Medicaid, or TANF (welfare) benefits, cannot do so by reducing or terminating your benefits while your bankruptcy is pending. If, however, you become ineligible for benefits, bankruptcy doesn't prevent the government from terminating your benefits or denying them on that basis.
- **Criminal proceedings.** Criminal proceedings, including collection of criminal fines and penalties are not stayed.
- **Foreclosures.** Foreclosure proceedings are initially stayed when you file for bankruptcy. However, the lender can ask the judge to lift the stay and allow it to proceed with the foreclosure—and the judge will probably do so. Also, the stay won't apply if you filed another bankruptcy within the last two years and the court, in that earlier proceeding, lifted the stay and allowed the lender to proceed with the foreclosure because it determined that you filed that bankruptcy as part of a scheme involving multiple filings or improper transfers of interests in the property to delay, hinder, or defraud creditors. In other words, you cannot

prevent foreclosure by filing serial bankruptcies.

- **Evictions.** The automatic stay generally doesn't stop an eviction if the landlord already had a judgment allowing it to evict you before the bankruptcy was filed. And the landlord may start or proceed with eviction proceedings against you during your bankruptcy if the landlord certifies the eviction is because you pose a danger to the property or your tenancy involves illegal drug use. What's more, most bankruptcy judges will lift the automatic stay and allow an eviction on the landlord's request.
- **Utilities.** Companies that provide you with utilities such as gas, heating oil, electricity, telephone service, and water, may not discontinue service because you are behind on payments or file for bankruptcy. However, they can shut off your service 20 days after you file if you don't give them a deposit or other means to assure future payment.
- **Tax debts.** The IRS can continue certain actions, such as a tax audit, issuing a tax deficiency notice, demanding a tax return, issuing a tax assessment, or demanding payment of an assessment, and can take your tax refund to pay a prior year's tax debt. The automatic stay stops the IRS from issuing a lien or seizing any of your other property or income, however.
- **Domestic relations proceedings.** Almost all proceedings related to a divorce or paternity action continue as before; they

are not affected by the automatic stay. These include actions to:

- set or modify child support and alimony
- collect unpaid child support and alimony from property that is not part of the bankruptcy estate (for example, compensation you earn after filing for a Chapter 7 bankruptcy)
- determine child custody and visitation
- establish paternity
- protect a spouse or child from domestic violence
- withhold income to collect child support
- report unpaid support to credit bureaus
- intercept tax refunds to pay unpaid support, and
- withhold, suspend, or restrict drivers' and professional licenses as leverage to collect child support.



CAUTION

The automatic stay is a powerful tool, but it becomes limited on a second bankruptcy you file within a year, and disappears entirely if you file a third bankruptcy in the same year—a strong reason to get it right the first time.

Chapter 7 Bankruptcy

As explained above, there are two types of bankruptcies: liquidation and reorganization. Chapter 7 bankruptcy is the liquidation type, where your nonexempt property (if

you have any) is sold—or “liquidated”—to raise money for your creditors. However, for most individual filers, there is precious little liquidation. Rather, most filers find that all their property is exempt from being sold for the benefit of the creditors. See Chapter 16 for a discussion of bankruptcy property exemptions.

How Chapter 7 Works

The Chapter 7 bankruptcy process takes about three to six months, currently costs \$299 in filing and administrative fees (which may be waived or paid in installments in certain circumstances), and commonly requires only one trip to the courthouse. To begin a Chapter 7 bankruptcy case, you fill out a packet of forms and file them with the bankruptcy court in your area.

The forms ask you to describe:

- your property and income
- your debts and monthly living expenses
- the property you claim is exempt, and
- any transactions involving your property in the past year.

You must also file a form that calculates your average income over the six months before you file, compares it to the median income for your state and household size, and, if your income exceeds the state median, determines whether you could pay off some portion of your debt over time in Chapter 13 bankruptcy. Together, these calculations are referred to as “the means test.” They are intended to prohibit people from using Chapter 7 to wipe out their debts if they could afford to pay off some of those debts in Chapter 13. (See “Who Can File

for Chapter 7 Bankruptcy,” below, for more information.)

In addition to these forms, within six months before you file bankruptcy, you must receive credit counseling from a nonprofit credit counseling agency approved by the U.S. Trustee’s office. When you file your bankruptcy papers, you must file a form certifying you completed the counseling, along with the debt management plan, if any, that you worked out with the counseling agent. Before you receive your bankruptcy discharge, you will also have to get financial management counseling—and file a form proving that you did so—as well.

Until your bankruptcy case ends, the trustee assumes legal control of the non-exempt property you own and the debts you owe as of the date you file. You cannot sell or pay for anything without the trustee’s consent. You have control over only your exempt property (see Chapter 16 to figure out which property is exempt) and the property you acquire and the income you receive after you file for bankruptcy.

If you are entitled to receive property when you file for bankruptcy but haven’t yet received it, you must turn the property over to the trustee when you eventually get it, if it’s nonexempt (see Chapter 16 to figure out which property is not exempt). Examples include commissions, proceeds of a divorce settlement, tax refunds, inheritances or life insurance from someone who has died, and personal injury recoveries. The same goes for certain specific types of property you become entitled to within 180 days after you file for bankruptcy—inheritance, proceeds of a divorce settlement, and life insurance benefits.

The trustee’s primary duty is to see that your unsecured creditors are paid as much as possible of what you owe them. Because the trustee is paid a percentage of the assets recovered for your creditors, the trustee is usually very interested in how you value and categorize your property.

A short hearing, called the creditors’ meeting, is scheduled within about 21 to 40 days after you file. At least seven days before that hearing, you must provide the trustee a copy of your most recent income tax return. At the hearing, you must also provide the trustee a picture ID, evidence of your Social Security number, evidence of current income (such as your most recent pay stub), statements for your checking and savings accounts and any mutual funds or brokerage accounts since the date you filed for bankruptcy, and documentation of your monthly expenses. The trustee goes through the papers you filed and brought with you and asks you questions. For example, if your list of property is sparse, the trustee might ask you if you’ve forgotten anything. You must attend the creditors’ meeting, though few of your creditors will. Most creditors’ meetings last no more than five to 30 minutes.

After this hearing, the trustee collects your nonexempt (unsecured) property, sells it, and pays your creditors. You don’t have to surrender nonexempt unsecured property if you pay the trustee the property’s value in cash, or if the trustee is willing to accept exempt property of roughly equal value instead. Generally, very few debtors have to give up any unsecured property in a Chapter 7 bankruptcy case.

If you file for bankruptcy and then change your mind, you can ask the court to dismiss your case. However, not all courts will allow you to do so, and dismissing your case may reduce the rights you have if you later decide you do need to file for bankruptcy. It's best to do some careful planning before you file to figure out if a Chapter 7 bankruptcy is really the best solution for you.

At the end of your bankruptcy case, most of your debts are discharged by the court (but see “Are Secured Debts Dischargeable?” below), which means you no longer owe anything to the creditor.

Are Secured Debts Dischargeable?

A secured debt means that a specific item of property (called a “security interest” or “collateral”) guarantees payment of the debt. Common secured debts include personal loans from banks, car loans, and home loans. Creditors have a lien on the collateral.

Bankruptcy eliminates your personal liability for your secured debts—the creditor can't sue you for the debt itself. But bankruptcy doesn't necessarily eliminate the creditor's lien on the secured property. You will eliminate the lien if you return the secured property to the creditor or, generally, if you pay the creditor its current retail value or the debt amount, whichever is less. Or, with certain types of liens on exempt property, you can file papers with the court to request that the lien be wiped out. Finally, you can agree to have the debt survive bankruptcy (called “reaffirmation”), keep the collateral, and make payments under the original loan agreement.

Who Can File for Chapter 7 Bankruptcy

Filing for Chapter 7 bankruptcy can be a powerful tool for dealing with debt, but it isn't available to everyone. Here are the rules.

You Can't Afford a Chapter 13 Plan

You aren't allowed to file for Chapter 7 if you have sufficient disposable income to fund a Chapter 13 repayment plan. There are clear criteria that dictate who will be allowed to stay in Chapter 7 and who will be forced to use Chapter 13. Disabled veterans whose debts were incurred during active duty and people whose debts come primarily from the operation of a business get a fast pass to Chapter 7. All others must meet the requirements set out below.

How High Is Your Income?

The first step in figuring out whether you can file for Chapter 7 is to measure your “current monthly income” against the median income for a family of your size in your state. Your “current monthly income” is not your income at the time you file, however: It is your average income over the last six full months before you file. (You don't have to include Social Security retirement and disability payments.) For many people, particularly those who are filing for bankruptcy because they recently lost a job, their “current monthly income” according to these rules will be much more than they take in each month by the time they file for bankruptcy.

Once you've calculated your income, compare it to the median income for your

state. (You can find median income tables, by state and family size, at the website of the United States Trustee, www.usdoj.gov/ust; under “Bankruptcy Reform,” click “Means Testing Information” and follow the links to find your state.)

If your income is less than or equal to the median, you can file for Chapter 7. If it is more than the median, however, you must pass “the means test”—another requirement of the law—in order to file for Chapter 7.

Can You Pass the Means Test?

The purpose of the means test is to figure out whether you have enough disposable income, after subtracting certain allowed expenses and required debt payments, to repay at least a portion of your unsecured debts over a five-year repayment period.

To find out whether you pass the means test, you start with your “current monthly income,” calculated as described above. From that amount, you subtract both of the following:

- certain allowed expenses, in amounts set by the IRS. Generally, you cannot subtract what you actually spend for things like transportation, food, clothing, and so on; instead, you have to use the limits the IRS imposes, which may be lower than the cost of living in your area.
- monthly payments you will have to make on secured and priority debts. Secured debts are those for which the creditor is entitled to seize property if you don’t pay (such as a mortgage or car loan); priority debts are obligations

that the law deems to be so important that they are entitled to jump to the head of the repayment line. Typical priority debts include child support, alimony, tax debts, and wages owed to employees.

If your total monthly disposable income after subtracting these amounts is less than \$117.08, you pass the means test, and will be allowed to file for Chapter 7. If your total remaining monthly disposable income is more than \$195.42, you have flunked the means test, and will be prohibited from using Chapter 7, with one exception: If you can prove to the court that you’re facing special circumstances that aren’t reflected in the calculations above, and that effectively decrease your income or increase your expenses to bring your disposable income below the \$195.42 figure, you will be allowed to use Chapter 7.

So what about those in the middle? They have to do some more math. If your remaining monthly disposable income is between \$117.08 and \$195.42, you must figure out whether what you have left over is enough to pay more than 25% of your unsecured, nonpriority debts (such as credit card bills, student loans, medical bills, and so on) over a five-year period. If so, you flunk the means test, and Chapter 7 won’t be available to you. (Again, if you are facing special circumstances that alter these figures, you may be able to convince the court to allow you to use Chapter 7.) If not, you pass the means test, and Chapter 7 remains an option.



RESOURCE

Nolo's bankruptcy resources. *How to File for Chapter 7 Bankruptcy*, by Stephen Elias, Albin Renauer, and Robin Leonard, offers much more information on these requirements, including detailed worksheets that will help you figure out whether you can use Chapter 7.

For a free online calculator that will help you through the means test math, go to www.legalconsumer.com.

You Haven't Previously Received a Bankruptcy Discharge

You cannot file for Chapter 7 (or Chapter 13) bankruptcy if you obtained a discharge of your debts in a Chapter 7 case filed within the last eight years or a Chapter 13 case filed within the last six years.

You Haven't Had a Previous Bankruptcy Dismissed Within the Previous 180 Days

You cannot file for Chapter 7 (or Chapter 13) bankruptcy if a previous Chapter 7 or Chapter 13 case was dismissed within the past 180 days because:

- you violated a court order
- you failed to appear in court
- the court ruled that your filing was fraudulent or constituted an abuse of the bankruptcy system, or
- you requested the dismissal after a creditor asked for relief from the automatic stay.

You Haven't Defrauded Your Creditors

A bankruptcy court may dismiss your case if it thinks you have tried to cheat

your creditors or concealed assets. Certain activities are red flags to the courts and trustees. If you have engaged in any of them during the past year, your bankruptcy case may be dismissed. These no-no's include:

- unloading assets to your friends or relatives to hide them from creditors or from the bankruptcy court
- running up debts for luxury items when you clearly had no way to pay them off
- concealing property or money from your spouse during a divorce proceeding, or
- lying about your income or debts on a credit application.

In addition, you must sign your bankruptcy papers under "penalty of perjury" swearing that everything in them is true. If you deliberately fail to disclose property, omit material information about your financial affairs, or use a false Social Security number (to hide your identity as a prior filer), and the court discovers your action, your case will be dismissed and you may be prosecuted for fraud.

Chapter 13 Bankruptcy

Filing for Chapter 13, like Chapter 7, immediately stops many of your creditors from taking further action against you. Currently, the filing fee is \$274. In a Chapter 13 bankruptcy, you keep your property whether it's exempt or not. In exchange, you pay off your creditors (sometimes in part, sometimes fully) over three to five years. Also, you cannot file for Chapter 13 bankruptcy if your unsecured debts exceed \$360,475 or your secured debts exceed \$1,081,400.

To begin a Chapter 13 bankruptcy, you fill out a packet of forms—much like the forms in a Chapter 7 bankruptcy—listing your income, property, expenses, and debts, and file them with the bankruptcy court.

You must also submit a repayment plan. This plan indicates how much you will pay each month and how that money will be divided among your creditors. Generally, you must devote all of your disposable income (calculated as explained in “You Can’t Afford a Chapter 13 Plan,” above) to your plan for three years if your average monthly income over the six months before you file is less than your state’s median income and five years if your income exceeds the state median. (These figures are also explained above.)

Some creditors are entitled to 100% of what you owe, while others may receive a smaller percentage or even nothing at all, depending on how much disposable income you have. A Chapter 13 plan normally must pay child support in full, for example, but it doesn’t have to pay off your credit card debts. You can also use a Chapter 13 repayment plan to get current on your mortgage, which is one reason why some people choose Chapter 13.

The income you use to repay creditors need not be wages. You can use benefits, pension payments, investment income, or receipts as an independent contractor. At the end of the three- or five-year period, the court will wipe out the remaining unpaid balance on your dischargeable debts.

As in Chapter 7 bankruptcy, you are required to attend a creditors’ meeting. Usually, you must also attend a confirmation

hearing where the judge reviews your plan and then confirms or denies it. Once your plan is confirmed, you make payments directly to the bankruptcy trustee, who in turn distributes the money to your creditors. If your plan is denied, you can modify it, refile it, and try again.

If, for some reason, you cannot finish a Chapter 13 plan—for example, you lose your job—the trustee can modify your plan. The trustee can give you a grace period if the problem looks temporary, reduce your total monthly payments, or extend the repayment period. As long as you’re acting in good faith, the trustee will try to help you through rocky periods. If it’s clear that you won’t be able to complete the plan because of circumstances beyond your control, the court might let you discharge the remainder of your debts on the basis of hardship.

If the bankruptcy court won’t let you modify your plan or give you a hardship discharge, you can:

- convert to a Chapter 7 bankruptcy (unless you are ineligible to file), or
- dismiss your Chapter 13 case, which means you’ll owe what you owed before filing for Chapter 13, less the payments you made, plus interest from the date you filed (which usually stopped accruing on unsecured claims while your case was ongoing).

Will Bankruptcy Solve Your Debt Problems?

Bankruptcy is good at wiping out unsecured debt, but you may have trouble eliminating

some other kinds of debts, including child support, alimony, most tax debts, student loans, and secured debts.

What Bankruptcy Can Do

Whether you use Chapter 7 or Chapter 13, your bankruptcy discharge will wipe out your unsecured debts, including credit card debt. (For more on which debts are secured and unsecured, see Chapter 4.) If you file for Chapter 13 rather than Chapter 7, you may have to pay back some portion of your unsecured debts. However, any unsecured debts that remain once your repayment plan is complete will be discharged.

What Bankruptcy Can't Do

Ordinarily, bankruptcy will not help you avoid paying child support or alimony, and it will offer only limited help if you are trying to get rid of tax debt or student loan debt. Here's what bankruptcy cannot do for you:

Prevent a secured creditor from repossessing property. A bankruptcy discharge eliminates debts, but it does not eliminate liens. So, if you have a secured debt, bankruptcy can eliminate the debt, but it does not prevent the creditor from repossessing the property. But after the repossession, bankruptcy does prevent the creditor from coming after you for additional money if the sale of the collateral did not generate enough cash to pay off the amount you still owed. Additionally, in bankruptcy you may be able to reduce how much you have to pay to keep the secured property, or use a Chapter

13 bankruptcy to keep property, including your home, if you have enough income to use to catch up on back payments over three to five years.

Eliminate child support and alimony obligations. Child support and alimony obligations survive bankruptcy—you will continue to owe these debts in full, just as if you had never filed for bankruptcy. And if you use Chapter 13, except in extraordinary circumstances, your plan will have to repay these debts in full. (See Chapter 13 of this book for more information.)

Wipe out student loans, except in very limited circumstances. Student loans can be discharged in bankruptcy only on a showing of “undue hardship”—a standard that is very tough to meet. You must be able to show not only that you cannot afford to pay your loans now, but also that you have very little likelihood of being able to pay your loans in the future. (See Chapter 12 for more information.)

Eliminate most tax debts. Eliminating tax debt in bankruptcy is not easy, but it is possible in some cases. For example, you may be able to eliminate certain older income taxes.

Eliminate other nondischargeable debts. The following debts are not dischargeable under either Chapter 7 or Chapter 13 bankruptcy. If you file for Chapter 7, these debts will remain when your case is over. If you file for Chapter 13, these debts will have to be paid in full during your repayment plan. If they are not repaid in full, the balance will remain at the end of your case:

- debts you forget to list in your bankruptcy papers, unless the creditor learns of your bankruptcy case
- debts for personal injury or death caused by your intoxicated driving
- fines and penalties imposed for violating the law, such as traffic tickets and criminal restitution, and
- recent income tax debts and all other tax debts.

In addition, some types of debts may not be discharged if the creditor convinces the judge that they should survive your bankruptcy. These include debts incurred through fraud, such as lying on a credit application or passing off borrowed property as your own to use as collateral for a loan.

What Only Chapter 13 Bankruptcy Can Do

In some situations, Chapter 13 bankruptcy offers more help than Chapter 7. You'll have to decide if this extra help is worth having to repay a portion of your debts over three to five years.

Stop a mortgage foreclosure. Though bankruptcy can delay a foreclosure, a Chapter 7 bankruptcy won't stop it for long. Chapter 13, however, was designed with foreclosure problems in mind. Filing for Chapter 13 bankruptcy will stop the foreclosure and can force the lender to accept a plan where you make up the missed payments and make the regular payments, through your repayment plan, even if outside of bankruptcy you would have to "cure" the default by paying off the entire loan, instead of just bringing back payments current.

Allow you to keep nonexempt property. In Chapter 7, you must give up your valuable nonexempt property so that the trustee can sell it and use the proceeds to pay off your creditors. If you have nonexempt property that you really want to keep, and a steady source of income, Chapter 13 might make more sense. You don't have to give up any property in Chapter 13 because you use your income to fund your repayment plan. (For more on exempt and nonexempt property, see Chapter 16.)

Repay nondischargeable debt. If you have debts that are difficult or impossible to discharge in bankruptcy—such as child support or student loans—you can at least use Chapter 13 to come up with a workable plan to repay these debts over time. And, because your plan doesn't have to repay unsecured debt if you have insufficient income, you may have more money available to devote to these nondischargeable debts.

Protect a codebtor from collection efforts. If you use Chapter 7 bankruptcy to discharge a debt you owe jointly with someone else, you will no longer be liable for that debt. Your codebtor will, however, and creditors are free to come after your codebtor to try and collect. If you want to protect your codebtor, you might consider Chapter 13 bankruptcy instead. In Chapter 13, you can include the debt in your repayment plan and pay it off over time. As long as you pay off the debt in full, creditors will leave your codebtor alone.

"Cram down" secured debts that are worth more than the property that secures them. You can use Chapter 13 to reduce a debt (other than a loan secured only by real property that is your home) to the current retail value

of the property securing it, then pay off that debt through your plan. For example, if you owe \$10,000 on a car loan and the car is worth only \$6,000, you can propose a plan that pays the creditor \$6,000 and have the rest of the loan discharged. However, you probably can't cram down the original debt for your purchase of a car for personal use made during the 30-month period before you filed for bankruptcy. You also probably can't cram down the original debt for the purchase of other personal property within one year before your bankruptcy filing.

**CAUTION**

This is a broad overview of a complicated topic. If you are seriously considering bankruptcy, you'll need to know much more about how Chapter 7 and Chapter 13 work, the advantages and disadvantages of each, which debts will be discharged, how to complete your paperwork, and much more. To get started, pick up a copy of Nolo's *The New Bankruptcy: Will It Work for You?* by Stephen Elias. If you decide that you want to file under Chapter 7 or Chapter 13, you can use one of Nolo's detailed, step-by-step guides: *How to File for Chapter 7 Bankruptcy* or *Chapter 13 Bankruptcy*.



Property Creditors Can't Take

Property Subject to Collection	320
Property You Own and Possess	320
Property You Own but Don't Have on Hand	321
Property You Have Recently Given Away	321
Property You Are Entitled to but Don't Yet Possess.....	322
Future Claims	322
Property That Is Only Partially Exempt	323
Your Share of Marital Property	324
Property Subject to the Bankruptcy Court's Authority	325
Property You Own and Possess	325
Property You Own But Don't Possess	325
Property You Have Recently Given Away	325
Property You Are Entitled to Receive but Don't Yet Possess.....	327
Proceeds From Property of the Bankruptcy Estate.....	327
Certain Property Acquired Within 180 Days After You File for Bankruptcy.....	328
Your Share of Marital Property	328
Applying Exemptions.....	330
Understanding the Property Exemption System.....	330
Types of Exemptions	331
Why State Exemptions Vary So Much.....	332
Doubling Exemptions If You Are Married	333
Claiming Your Exemptions	333
Is Your Property Exempt?.....	334
List Your Property.....	334
Value Your Property.....	334
Calculate Your Ownership Share.....	335
List Liens.....	335
Calculate Your Equity.....	336
Determine What Property Is Exempt	337

Turning Nonexempt Property Into Exempt Property..... 343
 If a Creditor Has a Judgment Against You..... 343
 If You Plan to File for Bankruptcy..... 343
 Fraudulent Transactions in Anticipation of Bankruptcy 344

This chapter will help you figure out what property you can protect, even if:

- A creditor has obtained a judgment against you and seeks to enforce it by taking your cash, or by seizing and selling other property.
- You decide to file for a Chapter 7 bankruptcy to wipe out some or all of your debts (see Chapter 15 for more on bankruptcy).

The good news is that you can almost certainly keep at least some of your property, no matter what. Certain types of property are “exempt,” or free from seizure, by judgment creditors. For example, clothing, basic household furnishings, your house, and your car are commonly exempt, as long as they’re not worth too much. However, any property you have that is *not* exempt *can* be taken to pay your debts.

If you file for bankruptcy, these same exemptions (provided by state laws) are generally used to decide which property you can keep and which items the bankruptcy trustee can sell to pay your creditors. In other words, if you file for bankruptcy, you should get to keep at least as much of your property as you would if you were simply faced with collection by a judgment creditor.

In addition, 15 states (and the District of Columbia) offer their bankruptcy filers another optional set of exemptions. These exemptions come from the federal bankruptcy code and may be more liberal than your state’s regular exemptions. If you have that choice, you get to choose which set of exemptions you want to use in bankruptcy: state or federal.

But when a judgment is being collected, you can use *only* your state exemptions. That’s why in this chapter we’re going to walk you through a worksheet where you can list your property and compare the exemptions available in bankruptcy and the exemptions that apply if you wait for collection of a judgment. This way you can figure out what property is protected in both circumstances.

Certain Property Can Always Be Taken Away From You

If you are still making payments on a major purchase—typically on a home or car—your creditor most likely has a lien on the property to secure repayment. This is called a “secured” debt. If you fall behind on your payments, you face the real possibility of foreclosure or repossession of the property that is the security for the loan. If you file for Chapter 7 bankruptcy, even if you aren’t behind on the payments, the creditor can repossess the property unless you:

- agree to continue owing the underlying debt
- pay the creditor the current retail value of the property, or
- (in some states) continue making payments even though the underlying debt is wiped out.

By the time you finish this chapter, you should know:

- what property you want to keep most
- how much of that property is exempt from collection of a judgment

- how much of that property is exempt in bankruptcy
- whether you can keep more property if you file for bankruptcy
- what you have to do to claim an exemption, whether in bankruptcy or collection
- what nonexempt property you might want to change into exempt property, and
- how to convert it legally.

Property Subject to Collection

This section discusses what property a creditor can seize when the creditor is enforcing a judgment—that is, when the creditor gets a court order allowing it to seize your property to satisfy the debt (plus interest). Some of your property should be protected (exempt) from collection. (You can find your state's exemptions in Appendix C. We provide a worksheet in Appendix D where you can list your property and figure out how much of it is exempt.)



CAUTION

Some states have other exemptions that apply to judgment creditors. Some states (including but not limited to Arkansas, Georgia, Maryland, and West Virginia) have other exemption amounts that apply to judgment creditors only. Most often, these other amounts apply to the homestead exemption only, but some apply to other property as well. The state exemptions listed in Appendix C do not include these judgment-creditor-only exemptions. If you

want to use an exemption against a judgment creditor, check to see if an amount different from the bankruptcy exemption amount listed in Appendix C, applies. You can find all of your state's exemptions (both bankruptcy and non-bankruptcy) in the National Consumer Law Center's *Bankruptcy Law & Practice* manual or *Fair Debt Collection* manual (many law libraries have these books, as do some public libraries). Or contact a local consumer attorney.



TIP

You may be “judgment proof.” You are considered judgment proof if your property and wages are “exempt” and cannot be taken by a creditor. You can determine whether your property is exempt by looking ahead at “Applying Exemptions.” If you are judgment proof, writing a letter to a creditor explaining this may convince the creditor that it's not worth the trouble to get a judgment against you.

Property You Own and Possess

When a creditor seeks to collect a judgment against you, all your property that is not exempt under state law could be taken to satisfy the judgment. As a practical matter, few judgment creditors go after tangible personal property (furniture, clothing, heirlooms, and collections) unless it's quite valuable (a boat or a plane, for example). Judgment creditors prefer to focus on real estate, deposit accounts, paychecks, stocks, and bonds.

Property that belongs to someone else is not available to judgment creditors—even if

you control the property—because you don't have the right to sell it or give it away.

EXAMPLE: A parent establishes a trust for her child and names you as trustee to manage the money in the trust until the child's 18th birthday. You control the money, but it's solely for the child's benefit under the terms of the trust; you cannot use it for your own purposes. It can't legally be seized by your judgment creditor.

Property You Own but Don't Have on Hand

Any nonexempt property you own is legally available to a judgment creditor, even if you don't have physical possession of it. For instance, you may own a share of a vacation cabin in the mountains but never go there yourself. Or you may own furniture or a car that someone else is using. Other examples include a deposit held by a stockbroker or the utility company.

How Creditors Seize Property

A creditor who has a judgment against you can get a writ of execution from the court and ask the sheriff to seize some of your property and put it up for auction. This is called "an attachment and execution" or a "levy of execution." (See Chapter 14.) The property doesn't have to be property that the creditor took as collateral for a loan.

Unless you act, the sheriff will seize and sell property that is protected by an exemption. (See "Applying Exemptions," below, for a discussion of exemptions.) The sheriff won't know what property is protected (exempt) without your help. You can prevent the sale of exempt property and get it back, or prevent its seizure in the first place by filing a notice of exemption or by taking similar steps specified by your state law. In some states, you need to file papers with the sheriff or an official by a deadline. In other states, the sheriff will let you set aside exempt property at the time of seizure.

How Do Creditors Find Out About Your Property, Anyway?

A creditor with a judgment against you can find out what property you have, used to have, or anticipate having at a court-ordered hearing. In some states, this is called a debtor's examination. Because it is a court-ordered appearance, you can be arrested, cited for contempt, and put in jail if you fail to show up.

You will have to answer the creditor's questions under oath—and lying under oath is a crime (perjury). If the creditor learns about assets that belong to you that are not exempt, it can get a court order to make you turn over the assets. If you refuse to obey the order, you could be held in contempt of court and sent to jail. (For more discussion of debtors' examinations, see Chapter 14.)

Property You Have Recently Given Away

People facing a judgment are often tempted to give their property to friends and relatives

or to pay favorite creditors before the other creditors show up.

If you give away your property or sell it for less than it's worth, a judgment creditor could sue you and the recipient of the property for deliberately attempting to defraud the creditor. This might result in the property being recaptured for the creditor's benefit, and you could be severely fined or prosecuted for your fraudulent activity.

You can generally choose what property to sell and which creditor to pay first. The exceptions to this rule are:

- bankruptcy (where the bankruptcy trustee gets to decide about your property)
- a security interest (where the creditor has a lien on the property), and
- fraud (where you improperly dispose of property so there's less left for your creditors—for example, by paying one creditor more than that creditor is owed).

EXAMPLE: Assume you owe two creditors \$10,000 each. If you are faced with a judgment collection action by Creditor A, you may safely cash out your \$10,000 securities portfolio and pay that full amount to Creditor B, leaving Creditor A high and dry.

Property You Are Entitled to But Don't Yet Possess

A creditor with a judgment against you can go after any assets coming your way, once your right to them is firm. The most common examples are salary and commissions, earned before or after the creditor got the judgment.

Other examples are refunds, vacation and severance pay, insurance payouts, royalties, inheritances, and guaranteed payments (such as from a trust or annuity). The procedure a creditor uses to seize your property in the hands of a third person is called “garnishment” or “attachment.”



CAUTION

Sometimes, the money in a trust is not protected from the beneficiary's creditors.

If you are a beneficiary who gets payments from a trust, check with a lawyer regarding the terms of distribution. Trusts often make payments until the beneficiary reaches a certain age and then give the beneficiary all the principal that's left. Your creditors will probably be able to seize that money when it becomes due to you.

State law limits how much of your earnings can be taken directly from an employer—it usually depends on the kind of debt. Taking part of your earnings is called “garnishment” or “wage attachment.” (For more on wage attachment, see Chapter 14.)

Future Claims

Creditors are not only interested in the property you own now—they sometimes set their sights on property or money that you might own in the future.

For example, you might have a claim against a third party that you haven't acted on—for instance, because you haven't applied for the refund, made the insurance claim, or brought the lawsuit.

Occasionally a creditor will accept the rights to such a claim to satisfy a judgment. This is called an “assignment of rights,” and it lets the creditor pursue the claim in your place. (Usually, you must agree to cooperate with the creditor in pursuing the claim as part of the assignment of rights.) Typically, because the value of the claim won’t be definitely settled or known when you make the assignment, you and the creditor will negotiate what you think it might be finally worth, plus interest, but minus what it will cost to pursue the claim. The claim’s value might be further modified, depending on how easy or difficult it looks to successfully collect on the claim.

Stock options are another kind of future right that may have some value to a creditor. However, you won’t be able to assign an option unless, at the time you make the assignment, you have a right to exercise the option. In legalese, the right must be “vested.” Even if the right has vested, it is not always assignable. But be assured that, as soon as you exercise the option, your creditors will be all over your stocks or stock account.

Property That Is Only Partially Exempt

State and federal laws protect certain kinds of property from seizure by creditors (and bankruptcy trustees). This protection is called an “exemption.” Sometimes, property is protected only up to a certain value. Property is partially exempt if its value is greater than the amount protected by the exemption. A creditor can seize and sell an asset that is only partially exempt, if the creditor pays you the value of your exemption.

When Is Bankruptcy Better?

Happily, most people find that in bankruptcy they can hang on to all or most of their property, including their wages and bank accounts. In contrast, when a judgment is granted, the first thing your creditors will look for and seize is part of your wages and all of your bank accounts.

In a Chapter 7 bankruptcy, creditors generally can get their hands only on the property you have on the day you file for bankruptcy (with a few exceptions). In contrast, a creditor with a judgment hangs around, basically forever, waiting for any event that leaves you with money in your hands, whether it’s a new job, sale of a major asset, or an inheritance. Creditors don’t go away until the judgment is satisfied, with interest.

These are the main reasons that people decide to file for bankruptcy rather than struggling to pay a judgment—to protect their future money from seizure, and to get creditors off their backs so they can make a fresh start.

A creditor can also wait for your fully exempt property to increase to a value greater than the amount protected under your state’s exemption law; this would also make your property partially exempt. However, for practical purposes, the creditor will not bother to seize the property until it appreciates sufficiently that the creditor will net enough money after the sale to make it worth the trouble.

EXAMPLE 1: You bought your house for \$90,000 in cash, just before a creditor got a judgment against you. In your state, a primary residence with a value of up to \$100,000 is exempt from seizure. After a number of years, a similar house in your neighborhood sells for \$150,000. The creditor still has a valid judgment and forces the sale of your house. It fetches \$150,000. You get the first \$100,000 from the proceeds. The costs of sale and the creditor's judgment get paid next. You get any money left over.

EXAMPLE 2: You bought your house for \$90,000 with \$10,000 in cash and a mortgage for \$80,000, just before a creditor got a judgment against you. Your state's exemption protects a primary residence up to \$100,000. After a number of years, the mortgage has been paid down to \$75,000 and the house is worth \$150,000, so your equity in the house is now \$75,000. The creditor won't bother to force the sale at this time, because after the sale the mortgage holder would be paid the first \$75,000 of the sale proceeds, then you would be paid \$75,000 (up to \$100,000 of your equity is exempt). There would be nothing left over for the creditor.

Forcing the sale of a noncash asset may be expensive and not very productive for the creditor. Creditors frequently choose to wait, either for the property to appreciate more, or for you to die or sell the property yourself. This is one reason why a judgment lien may

sit on a house for years after the owner's equity has exceeded the exemption cap.

Your Share of Marital Property

If you are or have been married, a creditor can collect its judgment out of your share of marital property. What constitutes your share of marital property depends partly on:

- whether you live in a “community property” state or a “common law” state
- whether the property being seized was a gift or an inheritance
- when the debt was incurred (before, during, or after the marriage), and
- why the debt was incurred.

Chapter 2 identifies which states use community property law and which ones go by common law. In Chapter 2, under the headings for “Community Property States” and “Common Law States,” review the sections on “Who Owes What Debts?” and “What Property Is Liable for Debts.” These explain which property is subject to collection, that is, which property a creditor may reach to collect a debt or judgment it has against one spouse, even if it doesn't have a judgment against the other spouse.



RELATED TOPIC

Domestic partnership and marital property. As explained in Chapter 2, couples who register as domestic partners or join in a civil union in states that offer these options generally are also subject to these rules about marital property and debts.

Property Subject to the Bankruptcy Court's Authority

When you file for Chapter 7 bankruptcy, everything you own when you file becomes subject to the bankruptcy court's authority. This property is collectively called your "bankruptcy estate." With a few exceptions (discussed below), property you acquire after you file for Chapter 7 bankruptcy isn't included in your bankruptcy estate. If you originally filed for Chapter 13 bankruptcy and now want to convert your case to a Chapter 7 bankruptcy, everything you owned on the date you filed your Chapter 13 petition is the property of your Chapter 7 bankruptcy estate. (11 U.S.C. § 348(f)(1)(A).)

Property You Own and Possess

Property that you own and possess—for example, clothing, books, computers, cameras, TV, stereo system, furniture, tools, car, real estate, boat, artworks, and stock certificates—is included in your bankruptcy estate.

Property that belongs to someone else is not part of your bankruptcy estate—even if you control the property—because you don't have the right to sell it or give it away. Here are some examples.

EXAMPLE 1: Your sister has gone to Zimbabwe for an indefinite period and has loaned you her computer system while she's gone. Although you might have use of the equipment for years to come, you don't own it. It isn't part of your bankruptcy estate.

EXAMPLE 2: You are making monthly payments on a leased car. You are entitled to possess the car as long as you make the monthly payments, but you don't own it. It is not part of your bankruptcy estate (but the lease itself is).

Property You Own but Don't Possess

Any property you own is part of your bankruptcy estate, even if you don't have physical possession of it. For instance, you may own a share of a vacation cabin in the mountains but never go there yourself. Or you may own furniture or a car that someone else is using. Other examples include a deposit held by a stockbroker, contractual rights to a royalty or commission, or a security deposit held by your landlord or the utility company.

Property You Have Recently Given Away

People contemplating bankruptcy are often tempted to give their property to friends and relatives or pay favorite creditors before the bankruptcy filing. Don't bother. Property given away or paid out shortly before you file for bankruptcy is still part of your bankruptcy estate—and the trustee has the legal authority to take it back.

Giving Away Property

You might be thinking about signing over the title certificate to an item of property to a relative or the person you live with, then not listing it in your bankruptcy papers. This is both dishonest and foolhardy. On

Are Stock Options Part of Your Bankruptcy Estate?

Whether stock options are part of your bankruptcy estate depends on when you received them and when they vest.

If you own stock options, you have the right to purchase stock at a specific price that is assigned at the time the stock options are granted. Making such a purchase is called “exercising your stock options.” As a general rule, stock options that you own when you file for bankruptcy are part of your bankruptcy estate. In addition, any stock you purchase by exercising your stock options is also part of the estate, even if you exercise those options after you file for bankruptcy. Courts treat these stock purchases as proceeds earned on property of the estate.

Sometimes, your stock options do not vest (that is, they cannot be exercised) until you have been with your company for a certain period of time. Even if they do not vest until after you filed bankruptcy, the portion due to your employment before you filed the bankruptcy may be included in your bankruptcy estate and should be listed as an asset. To calculate the value of your stock options, multiply the number of stock options to which you may become entitled based on your work before you filed bankruptcy by the difference between your option price (if known) and the fair market value of the stock. Even if the potential value of your options is very uncertain, they are still part of your bankruptcy estate, and the trustee will take them if they are marketable.

your bankruptcy forms, which you must sign under penalty of perjury, you must list all property transactions made within the previous two years. Knowingly failing to report a transaction is perjury—a felony. And, if the unreported transfer is discovered, the trustee can seize the item from whoever has it and sell it to pay your creditors if:

- You didn’t receive a reasonable amount for the item (selling an item for less than it’s worth is the same as giving a gift for bankruptcy purposes). Or,
- the transfer either left you insolvent or gave you a big push in that direction.

And prosecution for perjury might not be the only disaster that befalls you if you transfer property with the intent to defraud your creditors within the year before you file bankruptcy. The court may refuse to discharge *any* of your debts. (11 U.S.C. § 727(a)(2).)

Paying Off a Favorite Creditor

You can’t pay a favorite creditor, such as a relative or friend, before you file for bankruptcy, then leave your other creditors with less than they would have otherwise received. Payments and repossessions made shortly before filing for bankruptcy are called “preferences.” The trustee can sue the creditor for the amount of the preference and make it a part of the bankruptcy estate, so it can be distributed among all of your creditors. In general, a preference exists when you pay or transfer property worth more than \$600 to a creditor:

- within 90 days before filing for bankruptcy, or

- within one year before filing, if the creditor was someone close to you (such as a relative or business partner). (11 U.S.C. § 547.)

Property You Are Entitled to Receive but Don't Yet Possess

Property to which you are legally entitled at the time you file for bankruptcy is included in your bankruptcy estate, even if you haven't actually received it yet. The most common examples are wages you have earned but have not yet been paid and tax refunds that are legally owed to you. Here are some other examples:

- vacation or severance pay earned before you filed for bankruptcy
- property you've inherited, but not yet received, from someone who has died. By contrast, if you're a beneficiary in the will or revocable living trust of someone who is alive, you don't have to list that on your bankruptcy papers—he or she could change the will or trust before dying. If he or she has already died, however, you have a legal right to receive the property, and you must list it.
- property you will receive from a trust. If you receive periodic payments from a trust but aren't entitled to the full amount of the trust yet, the full amount of the trust is considered property of your bankruptcy estate anyway. List it on the worksheet and your bankruptcy papers. Although the bankruptcy trustee may not be able to get the money (depending on the type of trust), you don't want to be accused of hiding it.
- proceeds of an insurance policy, if the death, injury, or other event that triggers payment has occurred. For example, if you were the beneficiary of your father's life insurance policy, and your father has died but you haven't received your money yet, that amount is part of your bankruptcy estate.
- a legal claim to monetary compensation (sometimes called a legal "cause of action"), even if the value of the claim hasn't yet been determined. For example, if you have a claim against someone for injuring you in a car accident, you must include this potential source of money in your bankruptcy papers, even if the amount has not yet been determined in a lawsuit, settlement agreement, or insurance claim.
- accounts receivable (money owed you for goods or services you've provided). Even if you don't think you'll be paid, that money is considered part of your bankruptcy estate. It's the trustee's job to go after the money; leaving it off the bankruptcy forms can get you into trouble.
- money earned (but not yet received) from property in your bankruptcy estate. This includes, for example, rent from commercial or residential real estate, dividends earned on stocks, and royalties from copyrights or patents.

Proceeds From Property of the Bankruptcy Estate

If property in your bankruptcy estate earns income or otherwise produces money

after you file for bankruptcy, this money is also part of your bankruptcy estate. For example, suppose a contract to receive royalties for a book you have written is part of your bankruptcy estate. Any royalties you earn under this contract after you file for bankruptcy are also property of the estate.

One exception to this rule is money you earn from work you do after filing for bankruptcy. This money isn't part of your bankruptcy estate. The royalties you earn for working on a new edition of a book after filing for bankruptcy would not be part of your bankruptcy estate.

Certain Property Acquired Within 180 Days After You File for Bankruptcy

Most property you acquire—or become entitled to acquire—after you file for a Chapter 7 bankruptcy isn't included in your bankruptcy estate. But there are exceptions. If you acquire (or become entitled to acquire) certain items within 180 days after you file, you must report them to the bankruptcy court—and the bankruptcy trustee may take them unless you can claim them as exempt. (11 U.S.C. § 541(a)(5).)

The 180-day rule applies to:

- property you inherit during the 180-day period
- property from a marital settlement agreement or divorce decree, and
- death benefits or life insurance policy proceeds that become owed to you during the 180-day period.

You must report these items on a supplemental form, even if your bankruptcy case is over.

Your Share of Marital Property

Marital property is the property you and your spouse own together. The amount of marital property that will be included in your bankruptcy estate depends on two factors: (1) whether you file for bankruptcy jointly or alone, and (2) the laws of your state regarding marital property. (Chapter 2 explains marital property in detail.)

Community Property States

Chapter 2 identifies which states follow community property law and which follow common law. In states that use community property law, in general, all the property you acquire before marriage or after divorce is separate property, while all property acquired during marriage (except inheritances or gifts to one of you) is community property.

If you are married, live in a community property state, and file for bankruptcy, all the community property owned by you and your spouse is considered part of your bankruptcy estate, even if your spouse doesn't file. This is true even if the community property might not be divided 50–50 if you were to divorce. (See Chapter 2 for information on what constitutes community and separate property.)

EXAMPLE: Paul and Sonya live in California, a community property state. Sonya contributed \$20,000 of her separate property toward the purchase of their house. All the rest of the money used to pay for the house is from community funds, and the house is considered

community property. If Paul and Sonya were to divorce and split the house proceeds, Sonya would be entitled to \$20,000 more than Paul as reimbursement for her down payment. But they aren't divorced, and Paul files for bankruptcy without Sonya. Their house is worth \$250,000. Paul must list that entire value on his bankruptcy papers—that is, he can't subtract the \$20,000 Sonya would be entitled to if they divorced.

The separate property of the spouse filing for bankruptcy is also part of the bankruptcy estate. But the separate property of the spouse *not* filing for bankruptcy is not part of the bankruptcy estate.

EXAMPLE: Paul owns a twin-engine Cessna as his separate property (he owned it before he married Sonya). Sonya came to the marriage owning a grand piano. Because only Paul is filing for bankruptcy, Paul's aircraft will be part of his bankruptcy estate, but Sonya's piano won't be.

Common Law Property States

If your state is not a community property state, it is a common law property state. When only one spouse files for bankruptcy in a common law property state, all of that spouse's separate property plus half of the couple's jointly owned property goes into the filing spouse's bankruptcy estate.

Before you can figure out which property goes into the bankruptcy estate, you'll need to know the general rules of property ownership in common law states. They are:

- Property that has only one spouse's name on a title certificate (such as a car, house, or stocks), even if bought with joint funds, is that spouse's separate property.
- Property that was purchased or received as a gift or inheritance by both for the use of both spouses is jointly owned, unless title is held in only one spouse's name (which means it belongs to that spouse separately, even if both spouses use it).
- Property that one spouse buys with separate funds or receives as a gift or inheritance for that spouse's separate use is that spouse's separate property (unless, again, a title certificate shows differently).

See Chapter 2 for more information on property ownership and responsibility for debts in common law states.

Tenancy by the Entirety

In some common law states, married people can hold title to property as "tenants by the entirety." This form of ownership has special consequences when one or both of the owners files for bankruptcy.

Usually, property that spouses own as "tenants by the entirety" is part of the bankruptcy estate when the spouses file for bankruptcy together (subject to the usual exemptions that apply to that type of property: land, house, car, and so on). However, if one spouse owes most of the debts and files for bankruptcy *alone*, property held as "tenancy by the entirety" cannot be taken by the trustee or any creditor to pay

debts. Because the property belongs to the marriage (rather than to one spouse or the other), neither spouse can give it away or encumber it with debts on his or her own.

There are many variations on this general rule. For example, some states recognize tenancy by the entirety as a form of ownership that applies only to real estate. Some states presume that spouses who own property together own it as tenants by the entirety, while others require spouses to specify how they hold the property.

This tenancy by the entirety exemption is potentially a very powerful tool for debtors who declare bankruptcy: If your property falls within this rule, you may be able to keep it, regardless of its value. This means that you might be able to keep your house, for example, even if your equity well exceeds your state's homestead exemption.

If you live in a state that recognizes this form of ownership, you should certainly talk to a lawyer to find out whether and how it applies to you. (See Chapter 19 for information on legal research and lawyers.)

Applying Exemptions

As you know by now, when a creditor gets a judgment (court order) against you, the creditor wants to seize your property to satisfy the judgment. And if you file for bankruptcy, the bankruptcy trustee is also looking for property with which to pay your secured creditors. Fortunately, a judgment creditor or bankruptcy trustee can't seize your property if an "exemption" is available to protect it. Exemptions are protections that

are provided by state and federal laws. For a list of your state's exemptions and the federal exemptions, see Appendix C.

Understanding the Property Exemption System

Exempt property is the property you can keep in spite of a collection judgment or bankruptcy. Nonexempt property is the property that the creditors or bankruptcy trustee are entitled to take away from you. Therefore, the more property you can claim as exempt, the better off you are.

Figuring out exactly what property you're legally entitled to keep takes some work, but it's very important. It's your responsibility—and to your benefit—to claim all exemptions to which you're entitled. If you don't claim property as exempt, you could lose it to your creditors.

Each state has a set of exemptions for use by people who face collection of a judgment or who file for bankruptcy in that state. In addition, some states allow debtors who file bankruptcy to choose between their state's exemptions and federal bankruptcy exemptions. Debtors have this choice in Arkansas, Connecticut, the District of Columbia, Hawaii, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New Mexico, Pennsylvania, Rhode Island, Texas, Vermont, Washington, and Wisconsin.

California has adopted a unique exemption system. Although it does not allow debtors to use the federal exemptions, it offers two sets of state exemptions for people filing bankruptcy. As in the states that let people

choose the federal bankruptcy exemptions, people filing bankruptcy in California must choose one or the other set of state exemptions. If you are trying to find an exemption to protect property against collection of a judgment, in California, for example, you must use California's System 1.



TIP

You might be able to negotiate to keep certain nonexempt property. You don't have to surrender a specific item of nonexempt property to the bankruptcy trustee or creditors if you can pay them the property's value in cash, or if they are willing to accept exempt property of roughly equal value instead. Also, the bankruptcy trustee or creditor might reject or "abandon" the item if it would be too costly or cumbersome to sell. In that case, you also get to keep it. So remember, even when we say that you have to give up property, you still might be able to barter with the trustee or creditor about which property gets taken.

Types of Exemptions

Exemptions come in several basic flavors:

- exemptions of a type of property, up to a specified value
- exemptions of a type of property, regardless of value, and
- "wildcard" exemptions that can be applied to any property.

Specific Property, Up to Specified Value

The first kind of exemption protects the value of your ownership in a particular item

or type of property, but only up to a set dollar limit.

EXAMPLE: The New Mexico state exemptions allow you to keep \$4,000 of equity in a motor vehicle. If you were subject to collection, or if you were filing Chapter 7 bankruptcy in that state and using the state exemption list, you could keep your car if it was worth \$4,000 or less.

Even if the property is worth more than the dollar limit of the exemption amount, you can keep the property if selling it would not raise enough money both to pay what you still owe on it and to give you the full value of your exemption.

EXAMPLE: You own a car worth \$20,000 but still owe \$16,000 on it. Selling it would raise \$16,000 for the lender and \$4,000 for you, thanks to your New Mexico exemption. Since there would be nothing left over to pay your creditors, the creditor or trustee wouldn't take the car. Instead, you would be allowed to keep it as long as you are—and remain—current on your payments.

However, if your equity in the property exceeds the dollar amount of the exemption, the creditor or trustee may sell the property to raise money. A creditor would return your exemption amount to you, plus any money left over from the sale after costs are deducted and the judgment is paid. The bankruptcy trustee would return your exemption amount but use any extra money to pay your unsecured creditors.

EXAMPLE: You own a car worth \$20,000, and your state says \$4,000 of your equity in it is exempt. Let's say you only owe \$10,000 on that car. Selling the car for \$20,000 would pay off the lender in full, pay your \$4,000 exemption, and leave a portion of the remaining \$6,000 (after the costs of sale are deducted) to be distributed to your other creditors. In this scenario, you are entitled to the full value of your exemption—\$4,000—but not to the car itself.

Specified Property, Regardless of Value

Another type of exemption allows you to keep specified property, regardless of its value. For instance, a given state's exemptions might allow you to keep a refrigerator, freezer, microwave, stove, sewing machine, and carpets with no limit on their value.

Wildcard Exemption

Some states (and the federal exemption list that applies only in bankruptcy) provide a general-purpose exemption called a “wildcard” exemption. This exemption gives you a dollar amount that you can apply to any type of property. This is like the wildcard in poker, which you can use as any card you want. The same principle applies here. You can apply the wildcard exemption to property that would not otherwise be exempt.

EXAMPLE: Suppose you own a \$3,000 boat in a state that doesn't exempt boats but does have a wildcard of \$5,000. You can take \$3,000 of the wildcard and apply it to the boat, which means the

boat will now be considered exempt. And, if you have other nonexempt property, you can apply the remaining \$2,000 to that property.

Or, you can use a wildcard exemption to increase an existing exemption.

EXAMPLE: If you have \$5,000 worth of equity in your car but your state only allows you to exempt \$1,500 of its value, you will likely lose the car. However, if your state has a \$5,000 wildcard exemption, you could use the \$1,500 motor vehicle exemption and \$3,500 of the wildcard exemption to exempt your car entirely. And you'd still have \$1,500 of the wildcard exemption to use on other nonexempt property.

Why State Exemptions Vary So Much

Each state's exemptions are unique. The property you can keep varies considerably from state to state. Why the differences? The exemptions reflect the attitudes of state legislators about how much property, and which property, a debtor should be forced to part with when a judgment is being collected. These attitudes are rooted in local values and concerns.

But, in many cases, there is another reason why state exemptions differ. Some state legislatures have raised exemption levels in recent times, while other states last looked at their exemptions many decades ago. In the states that don't reconsider exemption amounts very often, you can expect to find lower exemption amounts.

Doubling Exemptions If You Are Married

If the federal bankruptcy exemptions are available in your state and you decide to use them, you may double all of the exemptions if you are married and filing bankruptcy jointly. This means that you and your spouse can each claim the full amount of each exemption.

If you are using your state's exemptions against collection of a judgment, you have to follow the state's rules on whether you can double exceptions. For instance, in the California exemption System 1 list, the exemption for motor vehicles may not be doubled, but the exemption for tools of the trade may be doubled in some circumstances. Also, you can double for a single piece of property only if title to the property is held in both of your names. If you are using your state's exemptions in bankruptcy, some courts allow you to double any state exemptions, based on federal law, but many courts abide by a state's exemption rules on whether or not spouses filing jointly can double the exemptions.

The exemption charts in Appendix C note whether a court or state legislature has expressly allowed or prohibited doubling. If the chart for your state doesn't say one way or the other, it is probably safe to double. However, keep in mind that this area of the law may depend on which bankruptcy court you are in, and it changes rapidly—legislation or court decisions issued after the publication date of this book may have changed the rules. (See Chapter 19 for information on doing your own legal research.)

Claiming Your Exemptions

In a few states, to take advantage of the state exemptions, you must file an exemption declaration with the court clerk, county recorder, county clerk, or similar official. The declaration is a simple form in which you describe (or list) your property and give its location. In the states where you must file a declaration, you can sometimes file it even after you've been sued or you've filed for bankruptcy.

The court clerk, county recorder, or county clerk may be able to tell you whether the office has an exemption declaration form. If it does, fill it out and file it. If the clerk's office doesn't have a form, the clerk may be able to tell you whether people file exemption declarations there anyway. If they don't, you probably don't have to, either.

In most states, any real estate or personal property in which you reside, such as a mobile home or boat, will qualify for the homestead exemption. To take advantage of the homestead protection, you usually must be living in the homestead when you claim it as exempt in your declaration.

This puts your creditors on notice that they shouldn't bother to go after that particular property. If they do, you need only point out your filed declaration for protection.

If you don't have to file an exemption declaration, you still must act to take advantage of your state's exemptions. If you file for bankruptcy, you must list all of the exemptions you claim on your bankruptcy forms. And, as pointed out in Chapter 14, if a judgment creditor goes after your exempt property, you must file a claim of exemption.

Is Your Property Exempt?

Here's how to figure out what creditors can't grab.

List Your Property

Go through the property checklist (Worksheet 3 in Appendix D) and check off everything that you have. Then enter the things you have into Column 1 of Worksheet 4: Property Exemptions.

When you complete Column 1 of Worksheet 4, you will have a complete inventory of your property. List everything you own. Lump together low-valued items, such as kitchen utensils. Keep in mind that many items you originally paid hundreds of dollars for are now worth much, much less.

Value Your Property

In Column 2 (again in Worksheet 4 in Appendix D), enter a value for each item of property listed in Column 1. For your cash, deposits, publicly traded stock holdings, bonds, mutual funds, and annuities, enter the cash amount. For shares of stock in small business corporations, any ownership share in a partnership, business equipment, copyrights, patents, or other assets that may seem hard to sell, do your best to assign a reasonable dollar amount.

If you own an item jointly, put its entire value here. In Column 3, you'll enter your share.

Here are some suggestions for valuing specific items.

Real estate. If your interest is ownership of a house, get an estimate of its market value from a local real estate agent or appraiser. If you own another type of real estate—such as land used to grow crops—put the amount it would sell for.

If you don't know how to arrive at a value, or if you have an unusual asset, such as a life estate (a current right to live in a house until you die) or a lease, leave this column blank.

Older goods. A local thrift store, used goods store, newspapers, want ads, and eBay are good places to look for prices.

Jewelry, antiques, and other collectibles. Any valuable jewelry or collection should be appraised.

Life insurance. Put the current net cash surrender value; call your insurance agent to find out that amount. Term life insurance has a cash surrender value of zero. Don't put the amount of benefits the policy will pay, unless you're the beneficiary of an insurance policy and the insured person has died.

Stocks, bonds, and so on. You can check the stock's current value by looking it up in a newspaper business section. If you can't find the listing, or the stock isn't traded publicly, call your broker and ask. If you have a brokerage account, use the value from your latest statement.

Cars. Start with the *Kelley Blue Book*. You can find this book at the public library or online at www.kbb.com. You can also find price information at www.nada.com. If the car needs substantial repairs, reduce the value by the amount it would cost you to fix the car.

Total Column 2 and enter the figure in the space provided.

Calculate Your Ownership Share

In Column 3, enter two amounts: the percentage of your separate ownership interest in the property and the dollar value of your ownership interest in the property.

If you own an item alone, your percentage is 100%. If you are married and own an item together, your ownership share depends on several factors, including the form of title (for example, joint tenancy or tenancy by the entirety) and the laws in the state where you live or where the property is located. Whether a collector or creditor can get property held by your spouse depends on the type of debt. For example, usually a creditor cannot take the separately owned property of one spouse to pay the separate debts of the other spouse. (See Chapter 2 for more on property rights and debt liability of married, divorced, or separated people.)

EXAMPLE: Audrey and her brother jointly bought a music synthesizer currently worth \$10,000. They still owe the music store \$3,000, but that is not subtracted in this column. Audrey's ownership share is one-half, or \$5,000.

List Liens

In Column 4, put the value of any legal claim (lien) against the property. For example, if you owe money on your house or car, the creditor probably has a security interest in that property. The property is collateral for the debt. Even if you own only part of the property, for example, and your spouse or partner owns a share, enter the full value

of the lien. If you didn't sign a security agreement or the creditor has not put a lien on your property, there is no lien, even if you still owe money.

EXAMPLE: Marian owns a house and owes her mortgage lender \$135,000. Last winter Marian had a new roof put on her house. She was not satisfied with the roofer's work and therefore didn't pay him all of his bill. He recorded a mechanic's lien on her house for \$5,000. Marian also owes the IRS \$25,000, and so the IRS recorded a lien on her house. In Column 4, Marian enters the total of all her liens: $\$135,000 + \$5,000 + \$25,000 = \$165,000$.

Liens must be paid off before property can be transferred to a new owner—such as a creditor with a judgment against you or the bankruptcy trustee. If the value of the lien exceeds the property's value, you're probably in luck. The creditor or trustee won't want the property; once the lienholders are paid, there won't be anything for the creditor or trustee.

Include all liens in Column 4, for example:

- mortgages and home equity loans
- personal loans for which you pledged items of property that you already own as security for your repayment
- security agreements with a department store that specifically takes a security interest in items purchased
- motor vehicle loans
- liens held by contractors who worked on your house without getting paid

what they claim you owe (mechanic's liens)

- liens placed by the IRS after you fail to pay a bill for past taxes, and
- judgment liens recorded against you by someone who won a lawsuit.



TIP

If you plan to file for bankruptcy, ignore liens against your personal property when computing the property's value. If you owe money to a major consumer lender, or bought a large appliance with payments over time, the lender or seller may have taken a lien on some of your personal property. You can sometimes remove this lien if you choose to file bankruptcy. Similarly, you may have a lien against your personal property if a creditor has obtained a court judgment against you. These liens too can frequently be removed in bankruptcy.

Calculate Your Equity

Your equity is the amount you would get to keep if you sold the property. If you own the property alone, calculate your equity by subtracting the amount in Column 4 from the property's total value (in Column 2). Put the amount in Column 5. If you get a negative number, enter "0."

If you own the property with your spouse and the two of you are considering filing for bankruptcy, or you together owe a creditor, calculate your equity by subtracting the amount in Column 4 from the property's total value in Column 2. If you co-own the property with someone other than a spouse, use the following formula:

1. If the liens in Column 4 are from debts jointly incurred by you and the other owner of the property, figure the total equity (Column 2 less Column 4). Then multiply that number by your ownership share (the percentage you figured in Column 3). Enter this figure in Column 5.

EXAMPLE: Bill and Lee, brother and sister, inherited their parents' \$150,000 house in equal proportions. Bill and Lee owe \$100,000 on the house's mortgage. Bill owes money to several creditors and wants to figure out his equity in the house. It's \$25,000—the total value of the house (\$150,000) less what he and Lee owe on the mortgage (\$100,000), multiplied by Bill's percentage share (50%). ($\$150,000 - \$100,000 = \$50,000$; $\$50,000 \times 50\% = \$25,000$.)

2. If the liens in Column 4 are from debts incurred solely by you, then deduct the total amount of the lien from the figure in Column 2. Only your assets—not a co-owner's—will go to pay your secured creditors.

EXAMPLE: Now assume that Bill and Lee inherited the \$150,000 house free and clear of any mortgage. Bill owes the IRS \$30,000, however, and the IRS placed a lien for that amount on the property. Now Bill's equity is \$45,000—the total value of the house (\$150,000), multiplied by Bill's percentage share (50%), less the lien (\$30,000). ($\$150,000 \times 50\% = \$75,000$; $\$75,000 - \$30,000 = \$45,000$.)

Determine What Property Is Exempt

As explained above, each state has exemption laws that determine which items of property can't be taken away from people with debt problems and what amounts are protected.

The exemption list for each state is in Appendix C. Mark the page for your state's list in Appendix C, because you will be referring to that list as you fill out the worksheet.



TIP

Focus on the property you really want to keep. If you have a lot of property and get bogged down in exemption jargon and dollar signs, start with the property you would feel really bad about losing. Focus on finding exemptions for that. Later, if you like, you can search for exemptions that would let you keep property that is less important to you.



TIP

Err on the side of exemption. If you can think of a reason why a particular property item might be exempt, list it even if you aren't sure that the exemption applies. If you later decide to file for Chapter 7 bankruptcy, you will only be expected to do your best to fit the exemptions to your property. Of course, if you do misapply an exemption and the bankruptcy trustee files a formal objection within the required time, you may have to scramble to keep the property that you mistakenly thought was exempt.

Step 1: Figure Out Which Exemptions You Can Use

If you are looking at your exemptions only to figure out which property you can keep safe from judgment creditors, turn to the exemption list for the state where you live in Appendix C. (In California, use the System 1 exemptions.) Skip ahead to Step 2.

If you want to figure out which property you can keep if you file for bankruptcy, however, things are a bit more complicated. First, you will have to figure out which state's exemptions are available to you under the new bankruptcy law. Then, if that state offers you a choice between the state's exemption list and the federal bankruptcy exemptions, you must decide which to use.

Domicile Requirements for Claiming Exemptions in Bankruptcy

If you've moved in the last few years, you might have to use the exemptions of the state where you *used* to live. (11 U.S.C. § 522(b)(3)(A).) Congress was concerned about people gaming the system by moving to states with generous exemptions just to file for bankruptcy. You must meet "domicile" requirements before you can use a state's exemption system.

If you have owned the same home for at least three and one half years, or if you don't own a home and haven't moved to a different state in the last two years, you can use the exemptions in the state where you currently live, and you can skip ahead to "Are the Federal Exemptions Available to You?"

You can file your bankruptcy where you have been domiciled for the longest time during the 180 days before you file. But where you can file is not necessarily the same as which state's exemptions you can use.

The domicile rules that apply to figure out which state's exemptions you can use apply for both personal property and your home. But whether there will be a cap on how much of the state exemption for your home you may claim depends on an additional time period.

Here are the rules for domicile that tell you which state's exemptions you can use:

- If you have been domiciled in your current state for at least two years, you can use that state's exemptions.
- If you have been domiciled in your current state for less than two years, you must use the exemptions of the state where you were domiciled for the better part of the 180-day period ending two years before your filing date.
- If the state where you will file for bankruptcy offers you a choice between the state and federal bankruptcy exemptions, you can choose the federal exemptions no matter how long you've been domiciled there.
- If these rules deprive you of the right to use any state's exemptions, you can use the federal exemptions. For example, some states allow their exemptions to be used only by current state residents, which might leave former residents who haven't lived in their new home state for at least two years without any available state exemptions.

Where's Your Domicile?

To figure out which exemptions you can use in bankruptcy, you need to know where your domicile is. As Congress defines it, your domicile is where you make your permanent home: the state where you vote, send your children to school, pay taxes, apply for your driver's license, register your car, receive your mail, and so on. This means something more than your residence, which generally means wherever you are living at any given time. Even if you reside in one state, your domicile may be elsewhere if you consider another state to be your true home. This might be the case if you must move temporarily for military service or to take a temporary position in another state: The state where you are staying temporarily is your residence, while the state to which you will return home is your domicile.

Whether bankruptcy law caps your state's exemption for a home depends on these additional time periods:

- If you bought your home at least 40 months (three years, four months) before filing, there is no federal law cap on the state exemption for your home.
- If you bought your home within the last 40 months (three years, four months), your homestead exemption is capped at \$146,450 (the amount is adjusted every three years based on the consumer price index), unless you bought the home using the proceeds from the sale of another home in the same state. (Of course, this cap won't affect you

unless your state has quite a generous homestead exemption.)

EXAMPLE 1: Eighteen months ago, Sarah moved from Seattle to Boston, where she bought an apartment. Her apartment is now worth \$300,000; Sarah owes \$200,000 on her mortgage and there's a mechanic's lien against the apartment for \$10,000, so her equity is \$90,000. If Sarah files for bankruptcy, she cannot use the Massachusetts exemptions because she hasn't lived there for two years. And that's a shame: Massachusetts allows homeowners to exempt a whopping \$500,000 worth of equity. Because Sarah lived in Seattle for years before making the move, she will have to use the exemptions for Washington, which allow homeowners to exempt only \$40,000 worth of equity.

EXAMPLE 2: Now let's assume that Sarah waited another year to file for bankruptcy. Her apartment is now worth \$355,000, her mortgage is now \$195,000, and the lien remains. Her equity is now \$150,000. She has been domiciled in Massachusetts long enough to use its exemptions, but now she has to watch out for the cap: Because she didn't buy her apartment at least 40 months ago, her exemption—that would otherwise easily cover all of her equity—will be limited to \$146,450.

Are the Federal Exemptions Available to You?

Now that you know which state's exemptions you can use, you'll need to figure out whether you have a choice between those

exemptions and the federal bankruptcy exemptions. The states that offer this choice are Arkansas, Connecticut, the District of Columbia, Hawaii, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New Mexico, Pennsylvania, Rhode Island, Texas, Vermont, Washington, and Wisconsin. You must choose either your state exemptions or the federal bankruptcy exemptions. You have to choose one set of exemptions or the other—you can't mix and match some state exemptions with some federal exemptions.

Locate these exemption lists from Appendix C:

- the federal bankruptcy exemptions (this list appears after all the states), and
- your state's exemptions plus the federal *nonbankruptcy* exemptions (also after all of the states).

Although California doesn't make the federal Bankruptcy Code exemptions available, it also has two separate exemption systems—both created by state law. You can choose between System 1 (the regular state exemptions system available to debtors in and out of bankruptcy) and System 2 (state exemptions available only in bankruptcy). Although one bankruptcy court ruled that California's state-created bankruptcy-only exemption system is unconstitutional (*In re Regevig Bankr. Ariz.* (June 24, 2008.)), so far California bankruptcy courts accept both systems. Most experts don't believe this will change any time soon.

Compare the federal bankruptcy exemptions to your state exemptions (or compare the two California exemption systems).

- **Your home.** If the equity in your home is your major asset, your choice may be

dictated by the homestead exemption alone. Compare your state's homestead exemption to the federal \$21,625 exemption (or \$43,350 for married couples). In some states, the homestead exemption is more than \$21,625, so you'll get greater protection in bankruptcy by using your state exemption. In other states, the homestead exemption is less than \$10,000, and so the federal exemptions may offer greater protections in bankruptcy.

- In California, the homestead exemption in System 1 protects up to \$150,000 in equity, while the System 2 list protects only \$20,725. Most homeowners in California end up choosing System 1, for obvious reasons.



CAUTION

In many states, you must file a homestead declaration to claim the homestead in a bankruptcy. If the notes under “homestead” in your state's exemption list in Appendix C say you have to file a declaration with your county recorder to claim the homestead in bankruptcy, it can't hurt to file a homestead declaration for your (nonbankruptcy) judgment collection action.

- **Your valuable property.** If you don't own a home or the equity amount in your home isn't a factor in your decision, identify the most valuable items you own. Look at the federal bankruptcy exemptions and your state and the federal nonbankruptcy exemptions. Which lets you keep the most in bankruptcy?

- **Small items.** If you're still having trouble choosing, look for small differences. For example, federal bankruptcy exemptions limit most personal property exemptions to \$550 per item, \$11,525 total. Some states have no such limit. On the other hand, if you don't have a house, the federal bankruptcy system has a wildcard exemption of \$1,150 plus up to \$10,825 of exemption on your home allowing you to claim anything you want. If you do have a house and use the homestead exemption, the \$10,825 is reduced by the amount of exemption that you use.

Step 2: Figure Out Which Property Is Exempt

Go through each item on Worksheet 4 and see whether it fits in an exemption category. If an exemption has no dollar limit, apply it to all items that fit the description.

EXAMPLE: The exemption system you're using exempts “furnishings and household goods.” You could argue that all of your household furniture, fixtures, appliances, kitchenware, and electronic equipment are exempt.

In evaluating whether or not your cash on hand and deposits of money are exempt, look to the source of the money, such as welfare benefits, disability benefits, insurance proceeds, or wages. Most government benefits already received will also be exempt.

If you use your state exemptions—this includes all Californians—you may also select from a list of federal nonbankruptcy exemptions, listed at the end of Appendix C.

These exemptions are mostly survivors' benefits and pensions for federal employees. Despite their name, you can use them both in bankruptcy and against judgment creditors. You can use both your state and the federal nonbankruptcy exemptions, unless they're duplicative. If both your state and the federal nonbankruptcy exemptions allow you to exempt a certain amount in one category, such as 75% of unpaid wages, you cannot add them together; 75% is all you can claim.

Step 3: Double Your Exemptions If You're Married and State Law Allows It

If you are married and filing jointly, you can double all exemptions unless your state expressly prohibits it, or a court has prohibited it. Look in your state's listing in Appendix C to see whether or not doubling is allowed. If you're using the federal bankruptcy exemptions, you may double all exemptions. If your state's chart doesn't say doubling is prohibited, go ahead and double.

Step 4: Apply Any Available Wildcard Exemption

If the exemption system you are using has a wildcard exemption, apply it to property you couldn't otherwise exempt, such as property worth more than the exemption limit or an item that isn't exempt at all.

Step 5: Determine the Value of Nonexempt Property

If an item (or group of items) is exempt to an unlimited amount, put "0" in Column 6.

If an item (or group of items) is exempt to a certain amount (for example, household goods to \$4,000), total up the value of all items that fall into the category using the values in Column 5. Subtract from the total the amount of the exemption. What is left is the nonexempt value. Enter that in Column 6.

EXAMPLE: Jeremiah lives in Vermont, where the exemption amount for household goods is \$2,500. Jeremiah adds up the value of all his household goods listed in Column 5 of the worksheet. The total is \$4,000. To find the nonexempt amount, Jeremiah subtracts the exemption amount from the total value: $\$4,000 - \$2,500 = \$1,500$. The nonexempt amount in this example is \$1,500. Jeremiah enters this amount in Column 6 of the worksheet on the line for household goods.

If an item (or group of items) is not exempt at all, copy the amount from Column 5 to Column 6.

When you're done, total up Column 6. This is the value of your nonexempt property.

Step 6: Do It Again

Unless your choice of exemption lists is dictated by your home equity, you'll be best served by going through the worksheet twice if another set of exemptions is available to you. The first time through, use your state exemptions (or System 1 in California). The second time, use the federal bankruptcy exemptions (or System 2 in California).

After you apply both exemption lists to your property, compare the results and decide which exemption list will do you the most good. You may find federal exemptions that don't exist in your state's exemption list or that are more generous than your state's exemptions. Or vice versa. You may be sorely tempted to pluck some exemptions out of one list and add them to the other list, but this isn't allowed. You'll have to use either your state's exemption list or the federal bankruptcy exemptions—you can't mix and match them.

EXAMPLE: Paula rents a condo in Albuquerque, New Mexico. Other than clothing, household furniture, and personal effects, the only property Paula owns is a vintage 1967 Chevy Camaro Rally Sport. Paula often checks out local car magazines and knows that the model she owns typically sells for about \$14,000, although this price varies by several thousand dollars based on the car's condition. Paula wants to know what will happen to her car if she files for Chapter 7 bankruptcy.

Because Paula has lived in New Mexico for more than two years, she will use that state's exemption laws. Her first step is to locate the exemptions for New Mexico in Appendix C. At the bottom of the New Mexico exemption listings for personal property, Paula finds an entry for motor vehicles and sees that the exemption is \$4,000. Paula begins to worry that she may lose her car, since it is worth more than three times the exemption limit.

Paula's next step is to search the New Mexico state exemptions for a wildcard exemption. Paula discovers (at the bottom of the list) that she has a \$5,000 wildcard exemption that she can apply to any property, including the Camaro. Add that to the \$4,000 regular motor vehicle exemption, and Paula can now exempt \$9,000. This amount still doesn't cover the Camaro's fair market value, which means the trustee would probably sell it, give Paula her \$9,000 exemption, and distribute the rest of the sales proceeds (\$5,000) to Paula's unsecured creditors.

Paula's next step is to see whether New Mexico allows debtors to use the federal bankruptcy exemptions. She looks at the top of the exemption page and sees a note that the federal bankruptcy exemptions are available in her state. She turns to the end of Appendix C (right after Wyoming) and finds the federal bankruptcy exemption list. Under personal property she sees a listing for motor vehicles in the amount of \$3,450. Oops. That's going in the wrong direction.

Paula next examines the federal bankruptcy exemptions to see whether they provide a wildcard exemption. She discovers that the federal bankruptcy exemptions let her use up to \$10,825 of the \$21,625 homestead exemption as a wildcard. Because Paula has no home equity to protect, she can apply \$10,825 worth of wildcard to the Camaro, in addition to the federal exemption for motor vehicles of \$3,450. Paula also sees that she can get an additional wildcard

exemption of \$1,150 under the federal exemption system, just in case she has other nonexempt property.

Because Paula is most concerned about keeping her car, and because the federal bankruptcy exemptions let her keep her car while the state exemptions don't, Paula decides to use the federal bankruptcy exemption list.

Turning Nonexempt Property Into Exempt Property

If you have an asset that is not exempt, you may want to sell it before you file for bankruptcy or before a judgment creditor has a chance to grab it. But be careful: If you file for bankruptcy, and the court believes you converted your property to cheat your creditors, you could get in big trouble.

If a Creditor Has a Judgment Against You

Unless you file for bankruptcy, you remain indebted to your judgment creditors. This doesn't mean, however, that you must willingly turn over your property to your creditors, unless a court orders you to. Thus, you can convert your nonexempt property into exempt property, even if the judgment creditor is on your tail. If you plan on unloading—or have already unloaded—some nonexempt property, you probably should see a lawyer. (See Chapter 19.)

EXAMPLE: Charlie, a carpenter, lives in Alaska. He has a savings account

of \$1,500. He also owes a judgment creditor \$1,300. Charlie's bank account isn't exempt. But Alaska's tools of trade exemption is \$3,360. Charlie closes his account and buys new carpenter's tools, fully protecting his \$1,500 from his judgment creditor.

There is one big caveat to converting property. If you give away nonexempt property or sell it for less than it is worth, a creditor may claim that you were fraudulently trying to hide assets. Selling property to close friends and relatives is especially suspicious. The creditor can sue the recipient of the property and ask the court to order the recipient to turn the property over to the creditor. If this happens, you could be fined. And, to add insult to injury, your relative who bought the item from you could sue you for compensation.

If You Plan to File for Bankruptcy

Converting nonexempt property into exempt property in contemplation of bankruptcy is more difficult, because bankruptcy rules prohibit some types of conversions that are assumed to be fraud on your creditors. And, if the bankruptcy judge believes you acted fraudulently, you may be denied a bankruptcy discharge.

There are two ways to reduce your nonexempt property: You can replace nonexempt property with exempt property, or use your nonexempt property to pay debts. Again, if you plan on unloading—or have already unloaded—some nonexempt property,

you probably should see a lawyer. (See Chapter 19.)

Replace Nonexempt Property With Exempt Property

There are several ways to replace your nonexempt property holdings with exempt property. You can:

- Sell a nonexempt asset and use the proceeds to buy an asset that is completely exempt. For example, you can sell a nonexempt coin collection and purchase clothing, which in most states is exempt without regard to its value.
- Sell a nonexempt asset and use the proceeds to buy an asset that is exempt up to the amount received in the sale. For example, you can sell a nonexempt coin collection worth \$1,200 and purchase a car that is exempt up to \$1,200 in value.
- Sell an asset that is only partially exempt and use the proceeds to replace it with a similar asset of lesser value. For example, if jewelry items are only exempt up to a value of \$200 each, you could sell your \$500 watch and buy one for \$200, putting the remaining cash into other exempt assets such as clothing or appliances.
- Use cash (which isn't exempt in most states) to buy an exempt item, such as furniture or tools.

Pay Debts

If you choose to reduce your nonexempt property by using the money from the sale of your nonexempt property to pay debts, keep the following points in mind.

Don't pay off a debt that could be discharged in bankruptcy. Dischargeable debts such as credit card bills can almost always be completely discharged in bankruptcy. The main reasons to pay a dischargeable debt would be to:

- keep good relations with a valued creditor, such as a store that you rely on for necessities, or
- pay a debt for which a relative or friend is a cosigner, because the friend or relative will be stuck with paying the whole debt if you get it discharged.

In either case, if the payment is more than \$600, you must wait at least 90 days—one year if the creditor is a friend, relative, or close business associate—after you pay that creditor before filing for bankruptcy. Otherwise, the payment is considered a “preference,” and the trustee can set it aside and take back the money to give to your other creditors.

You can, however, pay regular monthly bills right up until bankruptcy. So keep paying monthly phone bills, utilities, rent, and mortgage payments.

Fraudulent Transactions in Anticipation of Bankruptcy

There's one major limitation on selling nonexempt property and using it to purchase exempt property before filing for bankruptcy. You can't do it to defraud your creditors.

There are two main factors a judge looks at:

Your motive. The bankruptcy court may go along with your conversion if your primary motive is to buy property that will help you make a fresh start after bankruptcy. You

probably can sell a second car and buy some tools needed in your business or clothing for your kids. But if you sell your second car and buy a diamond ring or new stereo system, a court might consider it a greedy attempt to cheat your creditors, even if the item is legally exempt. If the court thinks that you're trying to preserve the value of your nonexempt property for use after bankruptcy rather than acquiring property you really need, your efforts will probably fail.

The amount of property involved. If the amount of nonexempt property you get rid of before you file is enough to pay off a healthy portion of your debts, the court may dismiss your bankruptcy case.

If you make prebankruptcy conversions that the bankruptcy court questions, the burden will be on you to justify your actions. Here are important guidelines to keep in mind in making prebankruptcy conversions and then dealing with the court:

- **Be honest.** Accurately report all transactions in your bankruptcy forms. If the subject comes up with the trustee, freely admit that you arranged your property holdings so that you could get a better fresh start. If you attempt to cover up your actions, the court may consider it evidence of fraudulent intent.

- **Sell and buy for equivalent value.** If you sell a \$500 nonexempt item and purchase an exempt item worth \$100, the court will want to know where the other \$400 went.
- **Sell property at reasonable prices.** When you sell nonexempt property to purchase exempt property, make the price as close to the item's market value as possible.
- **Don't make last-minute transfers or purchases.** The longer you can wait to file for bankruptcy after making these kinds of property transfers, the less likely the court will disapprove.
- **Don't merely change the way you hold title to property.** Merely changing the way property is held from a nonexempt form to an exempt form usually arouses suspicion. For example, if tenancy by the entirety property is exempt in your state, but you and your spouse hold your house in joint tenancy (not exempt), don't just change the title from joint tenancy to tenancy by the entirety.



CAUTION

Before engaging in any prebankruptcy transactions of this kind, you should consult with a bankruptcy lawyer.

Rebuilding Your Credit

Avoid Overspending.....	349
Figure Out Where Your Money Goes.....	350
Make a Spending Plan	351
Prevent Future Financial Problems.....	352
Understand Credit Scores and Credit Reports.....	355
What Is in Your Credit Report?.....	355
Who Can See Your Credit Report	356
The Three Cs.....	358
Clean Up Your Credit Report.....	359
Get Free Copies of Your Credit Report Regularly.....	359
Additional Times You Can Get Free Credit Reports.....	361
Review the Contents of Your Credit Report	363
Dispute Incomplete or Inaccurate Information in Your Report.....	365
If You Can't Resolve Incomplete or Inaccurate Information	
With the Credit Bureau.....	367
How to Complain About a Credit Bureau.....	368
Consider Adding a Brief Statement to Your Credit File	368
Add Other Information to Your Report.....	369
Add Positive Account Histories to Your Report	370
Add Information Showing Stability to Your Report	370
Your Credit Score	371
How Credit Scores Are Calculated	371
How to Get Your Credit Score.....	373
Build Credit in Your Own Name	374
Ask Creditors to Consider Your Spouse's Credit History	375
Use Existing or New Credit Cards	375
Applying for Credit Cards.....	375
Cosigners and Guarantors.....	378
Secured Credit Cards	379

Open Deposit Accounts..... 380

Work With Local Merchants 381

Obtain a Credit Union or Bank Loan 382

Avoid Credit Repair Clinics 383

“Credit is like a looking-glass, which, once sullied by a breath, may be wiped clear again.”

—Sir Walter Scott, Scottish poet and novelist, 1771–1832

If you’ve gone through a financial crisis—bankruptcy, repossession, foreclosure, history of late payments, or something similar—you may think that you’ll never get credit again. Not true. Although a bankruptcy filing generally can be reported in your credit report for no more than ten years, and other negative information can generally be reported for no more than seven, in about two years you can probably rebuild your credit to the point that you won’t be turned down for a major credit card or loan (assuming your financial troubles are behind you). Even in the limited situations in which negative information can be reported indefinitely, creditors will give less weight to old, negative information if you successfully rebuild your credit.

When reviewing a credit application from someone with poor credit, most creditors look for steady employment, a recent history of making and reliably paying for purchases on credit, and maintaining a checking and savings account since the financial setback. And many creditors disregard or downplay a bankruptcy discharge (often thought of as the most devastating of all financial setbacks) after about five years or sooner. For example, if you demonstrate responsible handling of your finances, FHA home loans are available to consumers two years after a Chapter 7

bankruptcy and after one year of making payments on a Chapter 13 bankruptcy.

And your credit may be better than you think. Most consumers don’t regularly get copies of the free credit reports required by law to be available to them. Many consumers wind up applying for credit from companies that offer credit with high interest and fees and harsh terms because they don’t realize they could qualify for better credit terms.

You can improve your credit file and have a better handle on how your credit rates so that you don’t settle for predatory or subprime credit offers when you could do better.



RESOURCE

Want more information on rebuilding your credit? For more detailed information, including 30 sample forms, see [Credit Repair](#), by Robin Leonard and Margaret Reiter (Nolo).

Avoid Overspending

Before you can start to rebuild your credit, you must understand where your money goes. With that information in hand, you can make intelligent choices about how to spend your money. If you’d rather not create a budget yourself, contact a nonprofit debt counseling agency. These organizations primarily help people negotiate with creditors, but they can also help you set up a budget for free or a nominal fee. (See Chapter 19 for information on finding a reliable debt counselor.)

Figure Out Where Your Money Goes

Before you put yourself on a budget that limits how much you spend, take some time to figure out exactly how much money you spend now. To do this, use Worksheet 5: Daily Expenses, in Appendix C.

Here's how to use the form:

1. Make eight copies of the form so you can record your expenditures for two months. (You'll want to track expenses for a couple of months to make sure your budget isn't based on a week or two of unusually high or low expenses.) If you are married or live with someone with whom you share expenses, you should each record your expenditures.
2. Select a Sunday to begin recording your expenses.
3. Record that Sunday's date in the blank at the top of one copy of the form.
4. Carry that week's form with you at all times.
5. Record every expense you pay by cash or cash equivalent. "Cash equivalent" means check, ATM or debit card, or automatic bank withdrawal. Be sure to include bank fees. Also, don't forget savings and investments, such as deposits into savings accounts, certificates of deposit, or money market accounts, or purchases of investments such as stocks or bonds.

Don't record expenses you charge on a credit card. Your goal is to get a picture of where your cash goes, and you won't actually pay off a credit card purchase right away. When you make

a payment on a credit card bill, that's when you should list the items your payment covered as an expense on your sheet. If you don't pay the entire bill each month, list older items you charged that total a little less than the amount of your payment, and attribute the rest of your payment to interest.

EXAMPLE: On Sunday night, you pay your bills for the week and make a \$450 payment toward your \$1,000 credit card bill. The \$1,000 includes a \$500 balance from the previous month, a \$350 airline ticket, a few restaurant meals, and accrued interest. On your daily expenditures form for Sunday, list \$450 in the second column. In the first column, identify corresponding expenses—for example, the plane ticket and one restaurant meal—and attribute some of it to interest. In this example, you have to look at your credit card statement from previous months.

6. At the end of the week, put away the form and take out another copy. Go back to Step 3.
7. Be sure to include the money you lay out maybe only once a month, such as \$50 for your child's swim class, \$10 for an office party gift, or a \$20 donation to a local charity. Be sure to also include monthly payments such as your rent or mortgage; educational loans; credit card payments; car payments; insurance payments; utility,

telephone, and cell phones, Internet, and cable bills; and other similar expenses.

8. Once you've tracked expenses for eight weeks, list on any form under the category "Other Expenditures" seasonal, annual, semiannual, or quarterly expenses you incur but did not pay during your two-month recording period. The most common are property taxes, car registration fees, magazine subscriptions, tax preparation fees, and insurance payments. But there are others. For example, if you do your recording in the winter months, don't forget summer expenses such as camp fees for your children or pool maintenance. Similarly, in the summer or spring you probably won't account for your annual holiday gift expenses. Think broadly and be thorough.

Be tough-minded—if you omit any money, your picture of how much you spend, and your budget, will be inaccurate.

At the end of two months, review Worksheet 5. Are you surprised at the dollar total or at the number of items you purchased? Are you impulsively spending your money, or do you tend to consistently spend it on the same types of things?

Make a Spending Plan

After you've kept track of your expenses for two months and have figured out your income (from Chapter 1, using Worksheet 1 in Appendix C), you're ready to create a

spending plan, or budget. Your twin goals in making a spending plan are to give you control over how you spend your money so you can use it for the things you have decided you really need and want, rather than overspending on impulse buys, and to start saving money—an essential part of rebuilding your credit.

To make and use a monthly budget, follow these steps:

1. Make several copies of Worksheet 6: Monthly Budget. Making a budget you can live with is a process of trial and error, and you may have to draft a few plans before you get it right.
2. Get out Worksheet 1: Monthly Income (from Chapter 1) and Worksheet 5: Daily Expenses.
3. Review the expenses listed on Worksheet 6. As you'll see, they are divided into common categories, such as home expenses, food, and transportation. If you don't have any expenses in a particular category, you can cross it out or simply leave it blank. If you have a type of expense that isn't listed on the form, add that category to a blank line.
4. In the first column (labeled "Projected"), list your average actual monthly expenses in each category. Calculate these amounts by adding together your actual expenses for the two months you tracked, then dividing the total by two. If you have seasonal, annual, or quarterly expenses, include a monthly amount for those as well. For example, if you pay \$3,600 in property taxes each year, you should list a projected

expense of \$300 a month ($\$3,600 \div 12$) in this category.

5. Add up all of your projected monthly expenses and enter the total on the line marked “Total Expenses” at the bottom of the “Projected” column.
6. Enter your projected monthly income (from Worksheet 2) below your projected total expenses.
7. Compare your projected income to your projected expenses. If you are spending more than you earn, you’ll either have to earn more or spend less to make ends meet. Unless you’re anticipating a big raise, planning to take on a second job, or selling valuable assets, you’ll probably have to lower your expenses. Review each category to look for ways to cut costs. Rather than trying to cut out an entire expense, look for expenses you can reduce slightly without depriving yourself of items or services you really need. For example, you might be willing to forgo one trip to a restaurant per month, subscribe to a less expensive cable package, or spend less on clothing. (See Chapter 6 for ways to cut expenses.)
8. Return to your budget and enter the adjustments you came up with. When you’re finished, add up these new figures and come up with a new total expense amount. If it’s less than your income, your budget is complete. If not, go back and try to find other places to cut back.
9. Label the remaining columns with the months of the year. Unless you wrote

your budget on the first of the month, start with next month. During the course of the month, use a pencil (or computer) to write down and update your expenses in each category.

10. At the end of the month, total up how much you spent. How did you do? Are you close to your projected figures? If not, go back and try to make some changes to keep the numbers in balance.

Check your figures periodically to help you keep track of how you’re doing. Don’t think of your budget as etched in stone. If you do, and you spend more on an item than you’ve budgeted, you’ll only find yourself frustrated. Use your budget as a guide. If you constantly overspend in one area, don’t berate yourself. Instead, change the projected amount for that category and find another place to cut. Keep in mind that a budget is just a tool to help you recognize what you can afford and where your money is going.

Prevent Future Financial Problems

There are no magic rules that will solve everyone’s financial troubles. But the following suggestions should help you stay out of financial hot water. If you have a family, everyone will have to participate—no one person can do all the work alone. So make sure your spouse or partner and children understand that the family is having financial difficulties and agree together to take the steps that will lead to recovery.

- **Create a realistic budget and stick to it.**

This means periodically checking it and

readjusting your figures and spending habits.

- **Eat at home.** It is much cheaper and often healthier to cook using fresh or dried ingredients like potatoes, beans and rice, pasta, fruits, and vegetables. To save time, cook enough at one time for two meals.
- **Don't impulse buy.** When you see something you hadn't planned to buy, don't purchase it on the spot. Go home and think it over. It's unlikely you'll return to the store and buy it.
- **Avoid sales.** Buying a \$500 item on sale for \$400 isn't a \$100 savings if you didn't need the item to begin with. It's spending \$400 unnecessarily.
- **Get medical insurance if at all possible.** Even a stopgap policy with a large deductible can help if a medical crisis comes up. You can't avoid medical emergencies, but living without medical insurance is an invitation to financial ruin.
- **Charge items only if you can afford to pay for them now.** If you don't currently have the cash, don't charge based on future income—sometimes future income doesn't materialize. If you must charge, a good rule of thumb is not to charge anything that won't exist when the statement arrives (such as meals, groceries, or movie tickets).
- **Commit to living without credit for a while.** Credit counselors often advise paying cash to cut your spending, and some psychological studies support that view. Some small studies at New York University showed consumers

are more willing to spend money with a credit card than when they pay cash. Apparently, credit cards don't feel like real money, so people are more willing to part with money when they pay with a credit card. Try using credit cards one week and cash the next, and see if using cash helps you save. Even if you don't spend less, you will likely still save by not having the cost of carrying a balance on the cards. Using cash only can be a relatively painless way to cut spending. (See Chapter 10 for information on which credit card accounts to close and how to do it properly.)

- **Avoid large rent or house payments.** Obligate yourself only for what you can now afford, and increase your mortgage payments only as your income increases. If you are married and both working, keep the payments low enough that you can handle them even if one of you loses your job. Consider refinancing your house if your payments are unwieldy and you can qualify for a lower interest rate. (See Chapter 5 for information on how to find refinancing in a tough economic times and avoiding rip-offs when refinancing.)
- **Avoid cosigning or guaranteeing a loan for someone.** Your signature obligates you as if you were the primary borrower. You can't be sure that the other person will pay.
- **Avoid joint obligations with people who have questionable spending habits—even a spouse or partner.** If you incur a joint debt, you're probably liable for it all if the other person defaults.

- **Don't make high-risk investments.** Opt for certificates of deposit, money market funds, and government bonds over speculative real estate, penny stocks, and junk bonds.

For more suggestions on cutting expenses, see Chapter 6.

Are You a Compulsive Spender?

Habitual overspending can be just as hard to overcome as excessive gambling or drinking. If you think you may be a compulsive spender, one of the worst things you can do is reduce your debt burden, then get more credit. Instead, you need to get a handle on your spending habits.

Debtors Anonymous, a 12-step support program similar to Alcoholics Anonymous, has programs nationwide. If a Debtors Anonymous group or a therapist recommends that you stay out of the credit system for a while, follow that advice. Even if you don't feel you're a compulsive spender, paying as you spend may still be the way to go—because of finance charges, transaction fees, and other charges, buying on credit may cost 20% to 35% more than paying with cash.

Debtors Anonymous groups meet all over the country. For local meetings and other information visit www.debtorsanonymous.org or call 800-421-2383.

Should You Stay Out of the Credit System?

Concern about habitual overspending isn't the only reason to stay outside the credit system. Followers of a movement known as “voluntary simplicity” suggest that reliance on credit is one of the reasons people are overworked and overstressed. Credit gives us the chance to consume—and often we consume far more than we need to live comfortably and at an easy pace.

Advocates of voluntarily downshifting are not suggesting that we all move to the wilderness, quit our jobs, and live without electricity and running water. But they do suggest that we take a hard look at our reliance on money—and credit—to bring us happiness.

For more information on voluntary simplicity, take a look at any of these resources:

- *Simplify Your Life: 100 Ways to Slow Down and Enjoy the Things That Really Matter*, by Elaine St. James (Hyperion)
- *Get a Life: You Don't Need a Million to Retire Well*, by Ralph Warner (Nolo), and
- *Your Money or Your Life: Transforming Your Relationship With Money and Achieving Financial Independence*, by Joe Dominguez and Vicki Robin (Penguin Books).

Understand Credit Scores and Credit Reports

The media is filled with advertising hype about getting your credit score. A credit score is simply a number that represents a current evaluation of your credit history that creditors use to quickly decide if you are likely to repay. If your credit score is good, the creditor will probably approve your application, or provide you better credit terms. If your credit score is below the creditor's threshold for routine approval, it might reject you, or charge you much higher rates or fees.

There is no single credit score for you. A variety of companies and methods are used to analyze credit histories and come up with ways to rate your credit history. Any credit score changes over time and can get better or worse. Because your credit scores are based on what's in your credit report, even more important than knowing your credit score(s) is knowing what is in your credit report and how to improve your credit report. Dealing with delinquent debts is the first step, which you have already started. Here are additional things you can do to improve your credit history, and the credit scores based on it.

What Is in Your Credit Report?

Nearly every adult in the United States has a credit file. Many of us first established credit in our late teens or early 20s when we accepted a gasoline or local department store preapproved credit card after high school graduation. Or perhaps we were lured by the

credit card companies that set up shop on our college's campus and offered all kinds of perks for signing up. Even if you have no credit cards and pay cash for everything, you've probably got a credit history if you've applied for a student loan, job, apartment, or insurance policy. The report of what is in your credit file or history is a credit report.

Information in your credit report can be broken down into five main categories:

- personal information about you
- accounts reported monthly
- accounts reported when in default
- public records, and
- inquiries (when and where you have applied for credit).

Credit reports may also contain a credit score. (See below.) Finally, some special credit reports, called investigative reports, contain even more information.

Credit reports do not contain information about race, religious preference, medical history, personal lifestyle, political preference, friends, or other information not related to credit. They may or may not include information about your income or your employment history.

Credit bureaus, also called consumer reporting agencies, are private, for-profit companies that gather information about your credit (your credit history) and then sell it to banks, mortgage lenders, credit unions, credit card companies, department stores, insurance companies, landlords, and employers. Those buyers use the information to supplement applications for credit, insurance, housing, and employment.

Consumer reporting agencies get personal information, including your name (and any

former names), past and present addresses, Social Security number, and employment history from creditors, who get it from you every time you fill out a credit application. For this reason, it is very important that your credit applications be accurate, complete, and legible.

Credit bureaus get most of their account data from creditors such as department stores, mortgage lenders, banks, and credit card issuers. They get public records information, such as evictions, child support orders, lawsuits, bankruptcies, and judgments from court records, and recorded tax, judgment, or mechanic's liens or other liens from county records offices. Under "inquiries," credit bureaus note the names of creditors and others (such as a potential employer) who requested a copy of your report during the previous year or two.

The bulk of information in a credit report is your credit account history, positive and negative. Each entry typically contains the name of the creditor, the type of account (such as credit card, student loan, or mortgage), your account number (or partial account number), when the account was opened, your credit limit or the original amount of the loan, whether anyone else is obligated on the account, your current balance, and your payment pattern for the previous 24 to 48 months (whether you pay on time or have been 30, 60, 90, or 120 days past due). The report will show if any accounts have been turned over to a collection agency, if you are disputing a charge, or if you've wiped out the debt in bankruptcy. Your credit report will usually

also contain a credit score, based on what is in your credit report.

EXAMPLE: Martin's credit report from one credit bureau shows he has been with his current employer for ten years and owned his current home for six years, that he closed one credit card account last year, and that he makes his credit card and mortgage payments on time, but owes \$250 in back property taxes. That credit bureau's credit score for Martin is 680.

Who Can See Your Credit Report

The federal Fair Credit Reporting Act (FCRA) (15 U.S.C. §§ 1681 and following) and state fair credit reporting laws regulate who can look at your credit report and how that information can be used.

In general, only a person or a business with a "permissible purpose" can access your credit report. The most common are:

- **Potential creditors** can look at your report whenever you apply for credit or for a loan. For a new transaction, you must have made an offer or otherwise initiated a credit transaction before the creditor can look at your report. But be careful when you are shopping around. Some potential creditors, like car dealers, may try to get you to authorize them to see your credit report before you are ready to make a purchase or seek credit, so they can use the information in making their sales pitch. This request will then appear on

your credit report and may negatively affect your credit. (See below for more information about credit inquiries.)

- **Employers** can look at your report only under certain circumstances and only if you give them written authorization.
- **Government agencies** can get your report to determine whether you are eligible for a license or public assistance. State and local government officials can also get reports to help determine whether you can make child support payments, and government agencies can also get credit reports in connection with investigations of international terrorism.
- **Insurance companies** can review your credit report in connection with underwriting insurance. A credit reporting agency cannot provide an insurance company a credit report that contains medical information unless you consent.
- **Collection agencies** can look at your report when trying to collect an overdue debt from you. They mainly do this to try to locate you or learn more about your assets.
- **Judgment creditors** can look at credit reports in order to decide whether to begin collection efforts and to try to locate you or your assets.
- **Landlords and mortgage lenders** can use reports to decide whether or not to rent to you or lend you money on your home or real estate.
- **Utility companies** can request your credit report but, in many circumstances, cannot deny you service due to bad credit.

- **Student loan and grant lenders** are required to check the credit of parents applying for PLUS loans. Also, you cannot get a new federal loan or grant if you are in default on another federal loan.

Apart from those listed above, most other people and businesses cannot legally request a copy of your credit report. For example, your credit report may not be used in divorce, child custody, immigration, and other legal proceedings. Government agencies are allowed to look at your report in these cases only if they get a court order allowing them to do so.

The FCRA also regulates the type of information that can be reported, how consumers can get copies of their reports, and how long information can appear on your credit report. (These rules are explained below.) The Act requires consumer reporting agencies to adopt reasonable procedures for gathering, maintaining, and distributing information and sets accuracy standards for creditors that provide information to bureaus.

Because of an amendment to the FCRA, sometimes referred to as FACTA (Fair and Accurate Credit Transactions Act), the agencies that enforce the FCRA have also developed rules for those who furnish information to consumer reporting agencies (including original creditors and debt collectors). These “furnishers” must also have reasonable policies and procedures for ensuring the accuracy and integrity of the information they report. Those rules became effective on July 1, 2010.

All states also have laws governing consumer reporting agencies. To find out if

your state's law provides more protections than the federal law does, contact your state's consumer protection office.

The Three Cs

Creditors use your credit report or credit score to help evaluate the three Cs.

Capacity. This refers to the amount of debt you can realistically pay given your income. Creditors look at how long you've been on your job, your income, and the likelihood that it will increase over time. They also look to see that you're in a stable job or at least a stable industry. So when you fill out a credit application, make your job sound as stable and high-level as you honestly can. Are you a secretary, or are you an "executive assistant" or "office manager"? Present yourself in the best possible light, but don't mislead or lie. Because employment history and income may not be included in your credit report, creditors may get that information from you, your records, and your employer.

Creditors do use your credit report to examine your existing credit relationships, such as credit cards, bank loans, and mortgages. They want to know your credit limits (you may be denied additional credit if you already have a lot of open credit lines), your current credit balances, how long you've had each account, and your payment history—whether you pay late or on time.

Collateral. Creditors like to see that you have assets they can take if you don't pay your debt. Owning a home or liquid assets such as a mutual fund may offer considerable comfort to a creditor reviewing

an application. This is especially true if your credit report has negative notations in it, such as late payments. A credit report won't tell a creditor what assets you own. Of course, if your mortgage payments are reported, the creditor will know that you own a home and how much you owe on the mortgage.

Character. Creditors develop a feeling of your financial character through objective factors that show stability. These include the length of your residency, the length of your employment, whether you rent or own your home (you're more likely to stay put if you own), and whether you have checking and savings accounts. Credit reports will tell creditors how long you have maintained credit accounts and how long you have lived at your current address, and they may have employment information. Some specialty credit reporting agencies include information on whether you have bounced checks.

EXAMPLE: Martin visits Cars for Less and finds a used Porsche for \$20,000. Martin plans to put one-third down and to use the dealer's financing for the rest. Although Martin brought \$6,000 cash, Cars for Less wants to be sure that he can make payments of about \$300 per month on the balance.

The finance manager at Cars for Less checks Martin's credit with the credit bureau it uses. She submits his name, address, and Social Security number using the dealer's computer link. Martin's credit report shows the length of time he has owned his house, and that he makes his credit card and mortgage payments

on time, but owes \$250 in back property taxes. The credit bureau provides Cars for Less with a credit score based on Martin's credit history (report) of 680. The finance manager decides that Martin's credit score, and Martin's 33% down payment qualify him for a low-interest-rate loan on the car.

Clean Up Your Credit Report

If you don't pay your bills, there's no question that your credit rating will suffer. Bankruptcies, repossessions, foreclosures, lawsuits to collect debt, and even missed or late payments get into credit reports. Potential creditors see the negative information and use it to deny you a loan or credit card or to charge you a higher rate of interest or give you a lower credit limit if they do grant you credit.

To successfully apply for a loan or credit card, or even for an apartment or job, you need for the lender, landlord, or employer to find favorable information in your credit report. You can't clean up your credit unless you know exactly what's in your credit report. You start by getting a copy. Then you review it and dispute the incorrect items.



RESOURCE

More on credit repair and credit bureaus. *Credit Repair*, by Robin Leonard and Margaret Reiter (Nolo), is a complete guide to rebuilding your credit. Among other things, it discusses in detail the credit reporting system, how to read your credit report, and the laws regulating

credit bureaus, and how to be sure your credit file is corrected and your creditors advised of the correction. In addition, it provides all the plain-English instructions and forms you need to clean up your credit report and build good credit.

Get Free Copies of Your Credit Report Regularly

You are entitled to a free copy of your credit report once every 12 months from each of the three major nationwide credit reporting agencies, Equifax, Experian, and TransUnion. You can get your free report from any or all of them by contacting the Annual Credit Report Service:

- by phone at 877-322-8228
- by mail at Annual Credit Report Request Services, P.O. Box 105281, Atlanta, GA 30348-5281, or
- online at www.annualcreditreport.com (be sure to use this exact URL—the Internet is saturated with imposters that have similar sounding names, and that charge a fee for getting your credit report).

There are also a number of nationwide specialty credit reporting agencies that keep records on particular types of transactions, such as tenant histories, insurance claims, medical records or payment, and check writing. You are also entitled to a free credit report each year from these agencies, but there isn't a centralized service for requesting them. Instead, you have to contact each agency individually to ask for your report—and you may need to call different phone numbers for different types of reports.

Beware of Imposter Sites and Come-Ons for Other Services

The three major credit bureaus have set up one central website, toll-free number, and mailing address for ordering free credit reports (listed above). The only authorized website is www.annualcreditreport.com. Once you have provided the required information to annualcreditreport.com, you will be directed to the three major credit bureaus' individual websites where you can get your free credit report.

TV ads and other websites with similar names advertise free credit reports, but beware. The “free” report often comes with strings attached, such as a service that you have to pay for when the introductory period ends, and some sites collect personal information. Don't respond to an email or click on a pop-up ad claiming it's from annualcreditreport.com: The official website will never send you an email solicitation, use pop-up ads, or call you to ask for personal information.

Imposter sites may have bold ads touting “FREE” services, monitoring services, or three credit bureau reports, but don't be fooled. If you see or hear an ad for a free credit report, on TV or the radio, look and listen for the required disclosure, “This is not the free credit report provided for by Federal law.” An ad on the Internet or in writing must say: “You have the right to a free credit report from AnnualCreditReport.com or 877-322-8228, the ONLY authorized source under federal law.” On the Internet, the disclosure must also provide a link to www.ftc.gov.

For example, you can contact LexisNexis Personal Reports (at <https://personalreports.lexisnexis.com>) to get your tenant history report (877-448-5732), your insurance claims report (866-312-8076), or your employment history report (866-312-8075). Or you can order a single report containing all types of information they have about you in their files by filling out and mailing in the request form available on the website. You can also contact ISO (at www.iso.com or 800-627-3487) to get a free annual report on your insurance claims. If you have private health insurance, for your medical history report from the Medical Information Bureau, call 866-692-6901 or 866-346-3642 (TDD), or go to their website for more information (click on “Consumers,” then on “Request Your MIB Consumer File”). For a check-writing report contact one or more of the major check-writing consumer reporting agencies, such as ChexSystems, at www.consumerdebit.com or 800-428-9623, or Telecheck at www.telecheck.com or 800-366-2425.

You must provide your name, address, Social Security number, and date of birth when you order a report. If you have moved in the last two years, you may have to give your previous address. You also may be required to provide information that only you would know, such as the amount of your monthly mortgage payment.

As a security measure, you can instruct the bureaus not to show your entire Social Security number on the copy of the report they send you.

Online results can be immediate; reports requested by phone or mail can take up to 15 days to process. The credit bureaus are

allowed to take longer if they need more information to confirm your identity.

The free annual credit reports you receive will not include your credit score unless you pay extra. As explained below, you are entitled to a free copy of your credit score in some circumstances. And paying for a copy of your credit score might not be worth the cost.

Three at Once or One at a Time?

The FCRA allows you to get a free credit report from each nationwide agency every 12 months. You can choose to check all three nationwide companies' reports at once, or to request one at a time during the course of a year. There are arguments in favor of either approach. By reviewing all three reports at once, you'll have a complete picture of your credit at that point; different creditors report to different credit bureaus, so the information in each of your reports may differ. On the other hand, ordering one at a time gives you an opportunity to monitor your credit over the course of the year. To use that system, every four months you can ask the Annual Credit Report Service (www.annualcreditreport.com) for a different company's report.

Don't forget, you can get a free report each year from any nationwide reporting agency—that includes the specialty credit reporting agencies (for example, agencies that report on tenants, check cashing, or medical records) listed above.

Additional Times You Can Get Free Credit Reports

You are also entitled to a free copy of your credit report if any of the following happens:

- Because of information in your credit report you were denied credit; you were granted credit, but not nearly the amount or on the terms you requested; your credit account is terminated; or the creditor makes unfavorable changes to your account (but does not change the terms of all, or substantially all of the consumer accounts of the same type). The creditor in this situation must tell you the name and address of the consumer reporting agency reporting the information that led to the denial or other adverse action. You must request your copy from that credit reporting agency within 60 days from the denial of credit or other adverse action. (See Chapter 18 for more information.).
- You are unemployed and planning to apply for a job within 60 days following your request for your credit report. You must enclose a statement swearing that this is true. It might also help to include a copy of a recent unemployment check, layoff notice, or similar document verifying your unemployment. You are entitled to one free report from each credit bureau in any 12-month period.
- You receive public assistance. Enclose a statement swearing that this is true and a copy of your most recent public assistance check as verification. You are

entitled to one free report from each credit bureau in any 12-month period.

- You reasonably believe your credit file contains errors due to someone's fraud, such as using your credit cards, Social Security number, name, or something similar. Here, too, you will need to enclose a statement swearing that this is true. You are entitled to one free report from that credit bureau in any 12-month period.
- You are a victim of identity theft or fraud or think that you may be. The FCRA gives consumers the right to request free credit reports in connection with fraud alerts.
 - If you suspect in good faith that you are, or may be, a victim of identity theft or another fraud, you can instruct the three major nationwide agencies to add a "fraud alert" to your file. You can request a free copy of your report from each agency once it places the fraud alert in your file.
 - If you are a victim of identity theft, you can send the three major nationwide agencies an identity theft report and instruct them to add an extended fraud alert to your file. You can request two free copies of your credit report from each agency during the next 12 months once it places the extended fraud alert in your file.

To request your credit report based on any of these circumstances, contact one or more of the credit bureaus. Here is the contact information for the three nationwide credit bureaus:

Equifax Information Services LLC
 P.O. Box 740241
 Atlanta, GA 30374
 800-685-1111
www.equifax.com/fcra
 Experian
 866-200-6020
www.experian.com/reportaccess
 TransUnion
www.transunion.com

If you've been denied credit, it's important to check your credit report to see what the problem is. For example, you may find inaccurate information that you should dispute or forgotten debts that you can take care of. It's also important to check your credit report if you're worried about identity theft.

If you don't qualify for a free report, you'll have to pay a fee of about \$10. Many websites offer a free copy with a 30-day trial membership for one of their services, such as credit monitoring. If you don't want the service, be sure to cancel it within the 30 days to avoid a monthly fee. Expect to receive your report in a week to ten days.



TIP

Don't buy the hype. Whenever you go to one of the credit reporting agencies' websites you will see bold hypes. The credit reporting agencies try to sell you things that you do not need and/or charge you for things you can get for free. For example, you can probably do without the "credit monitoring" service. And they'll offer credit reports from all three bureaus (a "three-bureau" or "3-in-1" report for "only" \$30 or \$40). This is a bad

deal: You can get a free copy from each bureau every 12 months, at a minimum, and, if any of the circumstances above apply, you can get additional free reports.

Review the Contents of Your Credit Report

Review your report carefully. One of the biggest problems with credit reports is that they contain incorrect or out-of-date information. Investigations by public interest groups and government agencies show that most credit reports contain errors. In some studies, 25% to 30% of the reports reviewed included errors serious enough that they might result in the denial of credit.

Sometimes credit bureaus confuse names, addresses, Social Security numbers, or employers. If you have a common name, say John Brown, your report may contain information on other John Browns, John Brownes, or Jon Browns. Or it may erroneously contain information on family members with similar names.

Ironically, concern over identity theft contributes to mistakes in credit reports. Businesses now ask consumers for the minimum of identifying information when they open accounts. The unintended consequence of not putting a full Social Security number or a date of birth next to a reported consumer transaction or delinquency is that it's easier than ever for a credit bureau to confuse one consumer for another. It's also common for bureaus to fail to note accounts in which delinquencies have been remedied.

Because consumers are generally not told when information is placed in their reports, they usually discover errors only when they are denied credit and then request a copy of their credit report. The consequences of such errors can be serious. Each year, people are wrongfully denied mortgages, student loans, car loans, insurance policies, employment, or a place to live because of credit bureau mistakes. Or, if they are granted credit, it may be at a higher interest rate than if the information in their report were accurate. It takes time and effort to try to clear up the report—extending by months, or even years, the time it takes to get a loan. You can avoid some of these problems by checking your credit report at each of the three nationwide credit bureaus, annually, or at least before applying for credit.

As you read through your credit report, make a list of everything that is incomplete, inaccurate, or improperly included in your report. In particular, look for the following:

- incorrect or incomplete name, address, phone number, Social Security number, marital status (such as a former spouse still listed as your spouse), or birthdate
- incorrect, missing, or outdated employment information
- bankruptcies not identified by the specific chapter of the bankruptcy code
- credit inquiries that are more than two years old
- credit inquiries by automobile dealers when you simply test drove a car or from other businesses when you were only comparison shopping (these creditors cannot lawfully pull your credit report without your permission)

until you indicate a desire to enter into a sale or lease)

- credit accounts that are not yours
- lawsuits you were not involved in
- incorrect account histories—look especially for late payments when you’ve paid on time
- a missing notation when you disputed a charge on a credit card bill (some agencies require you to file a written statement of dispute)
- duplicate entries, for example, when a collection agency is listed separately from the original creditor without showing the debt was transferred, making it appear that you are delinquent on more than one debt
- closed accounts incorrectly listed as open—it may look as if you have too much open credit
- any account you closed that doesn’t have a “closed by consumer” notation; if it’s not there, you’ll want it added, otherwise it looks like the creditor closed the account, and
- an account reported by a debt collector lists the date that it first received the account as the date the account was charged off, rather than the actual date that the original creditor charged off the debt.

Other common snafus include:

- commingled accounts—credit histories for someone with a similar or the same name
- premarital debts of your current spouse attributed to you
- voluntary surrender of your vehicle listed as a repossession
- paid tax, judgment, mechanic’s, or other liens listed as unpaid
- accounts that incorrectly list you as a cosigner, and
- paid accounts listed as unpaid.

If credit bureaus report information about medical providers, it must not identify the provider or disclose your medical condition.

You should also review your credit report for out-of-date information. Credit bureaus are prohibited from reporting certain kinds of negative information after certain periods of time. Here are the basic rules:

- Bankruptcies can be reported for no more than ten years from the date you filed for bankruptcy
- Lawsuits and judgments may be reported from the date of the entry of judgment against you for up to seven years or until the governing statute of limitations has expired, whichever is longer.
- Paid tax liens may be reported from the date of the last payment activity for up to seven years.
- Most criminal records, such as information about indictments or arrests, may be reported for only seven years. But records of criminal convictions may be reported indefinitely.
- Delinquent accounts may be reported for seven years after the date of the last scheduled payment before the account became delinquent.
- Accounts sent to collection (within the creditor company or to a collection agency), accounts charged off, or any other similar action may be reported from the date of the last activity on

the account for up to seven years. The seven-year period begins 180 days after the delinquency (the last missed payment) that led to the collection activity or charge-off. The clock does not start ticking again if the account is sold to another collection agency, you make a payment on it, or you file a dispute with the credit reporting agency. Creditors must include the date of the delinquency when they report past-due accounts to credit bureaus.

- Overdue child support may be reported for seven years.
- Some adverse information regarding U.S. government-insured or -guaranteed student loans, or national direct student loans, may be reported for much more than seven years.
- Bankruptcies, lawsuits, paid tax liens, accounts sent out for collection, criminal records, overdue child support, and any other adverse information may be reported beyond the usual time limits if you apply for \$150,000 or more of credit or life insurance, or if you apply for a job with an annual income of at least \$75,000. However, as a practical matter, credit bureaus usually delete all items after seven or ten years.
- Positive information may be reported indefinitely.

Dispute Incomplete or Inaccurate Information in Your Report

Once you've compiled a list of all incomplete, inaccurate, or out-of-date information you want changed or removed,

fill in the “request for reinvestigation” form which was included with your credit report. If the agency did not include such a form, it is available online. Incorrect information does not have to be negative to be challenged. It is enough that the information is incomplete or inaccurate. You can submit the form electronically but, because you will often want to submit documents to back up your correction, it's better to mail it.

List each incorrect item (and its account number, if any) and explain exactly what is wrong. Enclose copies of documents that support your claim. It may help to include a copy of your credit report with the disputed items highlighted. Keep your original documents. Once the credit bureau receives your letter, it must contact the creditor reporting the incorrect information within five business days of receiving your complaint; it must review all relevant information you supplied; and it must reinvestigate the matter and record the current status of the disputed information or delete it within 45 days if you dispute information after receiving your free annual credit report—otherwise 30 days, which can be extended up to 45 days if you send the bureau additional relevant information during the 30-day period. If you let a credit bureau know that you're trying to obtain a mortgage or car loan, they can often do a “rush” verification.

As of July 1, 2010, companies that furnish information to a consumer reporting agency (including original creditors and debt collectors) have a duty to investigate if you send them a letter disputing information about the account that is in your credit

report. If the company specifies a particular address for receiving disputes, you must send your dispute letter to that address. If you already contacted the consumer reporting agency directly to dispute incorrect or incomplete information in your credit file, and the company that furnished the information already responded appropriately to that dispute, it does not have to respond again, unless you provide additional information. Companies furnishing information about you to consumer reporting agencies must respond in the time frame that applies when you send a dispute letter to a consumer reporting agency. Even if you dispute the error directly with the consumer reporting agency, it often makes sense to also send a dispute letter directly to the company that furnished the incorrect information to the consumer reporting agency.

Whether you contact them directly about your dispute, or they are contacted by the consumer reporting agency, these “furnishing” creditors or debt collectors have a duty to correct and update the information they send to credit bureaus, if they determine it is incomplete or inaccurate. Be sure to keep a photocopy of your request for reinvestigation and letter to the furnishing creditor. Requesting a reinvestigation won’t cost you anything.

The consumer reporting agency is not required to investigate any dispute that it determines is frivolous or irrelevant because, for example, you don’t provide enough information to allow the agency to investigate the dispute. The consumer reporting agency also does not have to

investigate if it looks like you used a generic form that disputes most things in your credit file that was prepared by a credit repair company service or that you prepared using a credit repair company service form. The agency must notify you of its decision, including the reasons behind it, within five business days after making it, including a revised credit report if any changes were made.

You might be concerned that if information is incomplete or incorrect with one consumer reporting agency, it will be wrong with the others. That may be the case, which is one reason you should get copies of your files from all three agencies if you find errors in one credit report.

If you don’t hear from the agency by the 30- or 45-day deadline, send a follow-up letter, and file a complaint with your state attorney general and the Federal Trade Commission, the federal agency that oversees consumer reporting agencies. Again, keep a copy for your records.

If the agency cannot verify the information in dispute, or agrees that the information is inaccurate or incomplete, it must modify the information or remove it from your file. The agency also must inform the furnishing creditor that the information has been modified or deleted. Consumer reporting agencies will sometimes remove an item on request without an investigation if rechecking the item is more bother than it’s worth. Requesting an investigation won’t cost you anything.

EXAMPLE: Jim’s credit file with Credit Gatherers reporting agency shows

that he has not paid a \$275 bill from Acrelong Drug Store. But Jim has never done business with Acrelong. Credit Gatherers contacts Acrelong for verification. Acrelong has no information showing that Jim owes \$275 and cannot verify the debt. Credit Gatherers removes the information from Jim's file.

The credit bureau must also adopt procedures to keep the incomplete or inaccurate information from reappearing. It may reinsert removed information only if the furnisher of the information certifies its accuracy and the credit bureau notifies you in writing within five business days of the reinsertion

If you receive favorable action from a credit bureau, you should take the following steps:

- Find out whether other credit bureaus' files contain the same error and, if so, send the results of the investigation to those agencies as well.
- Get a copy of your report three to six months later to make sure that the credit bureau has not reinserted the information.

You can also ask the bureau to notify past users of your report that inaccurate or unverifiable information has been deleted from it. It must notify users whom you specify who received your report for employment purposes within the past two years and other users who received your report within the past six months. If you ask within 30 days of when the agency informed you of the results of its investigation, it must do so at no charge to you.

If You Can't Resolve Incomplete or Inaccurate Information With the Credit Bureau

If the credit bureau responds that the information you dispute is accurate and will remain in your report, you will have to take more aggressive action. If you have not already done so, contact the company that is furnishing the information and demand that it be removed. Write to the customer service department, vice president of marketing, and president or CEO. If the information was reported by a collection agency, send the agency a copy of your letter, too. Under the Fair Credit Reporting Act, the furnisher must do the following:

- not ignore information they know contradicts what they have on file
- not report incorrect information when they learn that the information is incorrect
- provide credit bureaus with correct information when they learn that they are reporting incorrect information.
- notify credit bureaus when you dispute information
- note when accounts are "closed by the consumer"
- provide credit bureaus with the month and year of the delinquency of all accounts placed for collection, charged off, or similarly treated, and
- finish their investigation of your dispute within the 30-day or 45-day periods the credit bureau has to complete its investigation.

If the creditor cannot or will not assist you in removing the incorrect or incomplete

information from your file, you will have to contact the credit bureau for additional help.

How to Complain About a Credit Bureau

If a credit bureau employee violates the law, you can complain to the Federal Trade Commission using its online form. Go to www.ftccomplaintassistant.gov and select “FTC Complaint Assistant.” You can also contact the FTC by phone (877-382-4357) or TDD (866-653-4261) or mail:

Federal Trade Commission
CRC-240
600 Pennsylvania Avenue, NW
Washington, DC 20580

Include the name of the credit bureau, its address and phone number, the name of the employee you dealt with, the nature of the problem, and the dates of your contact with the credit bureau. Identify documents that support your position. Be sure to print a copy for yourself and send another copy to the credit bureau.

In many states, you should also complain to the state agency that regulates illegal or unethical conduct by businesses (such as your state attorney general). If the credit bureau is associated with a collection agency, complain to the FTC and your state agency that regulates collection agencies.

If you were seriously harmed by the credit bureau—for example, it continued to give out false information after you requested corrections—you may be able to sue. Generally, the FCRA lets you sue a credit bureau for negligent or willful noncompliance with the law within two

years after you discover the agency’s harmful behavior or within five years after the harmful behavior occurs, whichever is sooner. You can sue for actual damages, including court costs, attorney’s fees, lost wages, and, if applicable, defamation and intentional infliction of emotional distress.

In the case of truly outrageous behavior, you can recover punitive damages—damages meant to punish for malicious or willful conduct. Under the FCRA, the court decides the amount of the punitive damages. You will need to use (or at least consult) a lawyer if you want to pursue this type of lawsuit. (See Chapter 19.)

Consider Adding a Brief Statement to Your Credit File

If the credit bureau’s investigation doesn’t resolve the dispute to your satisfaction, you have the right to file a brief statement describing the nature of the dispute. The bureau must include your statement, or a summary or codification of it, in any report that includes the disputed information. If the reporting agency helps you write the summary, your statement may be limited to 100 words. Otherwise, there is no word limit, but it is a good idea to keep the statement very brief.

The credit bureau is only required to provide a summary or coded version of your statement (not your actual statement) to anyone who requests your file. If your statement is short, the credit bureau is more likely to pass on your statement, unedited. If your statement is long, the credit bureau will probably condense your explanation to

just a few sentences or codes. To avoid this problem, keep your statement clear and as short as possible.

If you request it, the bureau must also give the statement or summary to anyone who received a copy of your file within the past six months—or two years if your file was given out for employment purposes. This service is free if you request it within 30 days after the bureau has notified you of the results of the investigation. Otherwise, you will have to pay the same amount as the bureau would normally charge for a credit report (about \$10).

Credit bureaus are only required to include a statement in your file if you are disputing the completeness or accuracy of a particular item.

Don't assume that adding a brief statement is the best approach. It's often wiser to simply explain the negative mark to subsequent creditors in person than to try to explain it in such a short statement. Many statements or summaries are simply ineffective. Few creditors who receive credit reports read them, and credit scoring programs may ignore your statement. In any David (consumer) vs. Goliath (credit bureau) dispute, creditors tend to believe Goliath.

Add Other Information to Your Report

In addition to disputing incorrect information, you can also add information to your report that makes you look more credit-worthy. The bureau does not have to include a statement if you are only explaining extenuating circumstances or other reasons why you haven't been able to pay your debts. If

the bureau does allow you to add such a statement, it can charge you a fee.

Sample Statements

Here are a few examples of statements describing disputes:

- A credit report includes a lawsuit filed by a roofing company for failure to pay for its work. The information is accurate, but the consumer didn't pay because the work was done incorrectly. The consumer might add a statement to the file reading, "Don't owe. Defective workmanship, refuse to pay until fixed."
- A credit report indicates that a consumer is unemployed, but the consumer has in fact worked as an independent contractor during that time. The consumer might send a statement reading, "I work as a freelance technical writer, averaging \$50,000 annually."
- A credit report states that the consumer owes a debt to an electronics store. The consumer bought a CD player that doesn't work, and the store refused to take it back or provide a refund. The consumer might submit this statement, "Don't owe. Merchandise is defective, and the store refuses to provide a refund or replacement."

There are three types of information you may want to add:

- positive account histories that are missing from your report
- information demonstrating your stability, and
- explanations of any incomplete or disputed information in your report.

Add Positive Account Histories to Your Report

Often, credit reports don't include accounts that you might expect to find. Some creditors don't report the status of accounts to credit bureaus. Others report only infrequently. If your credit file is missing credit histories for accounts you pay on time, send the credit bureaus a copy of a recent account statement and copies of canceled checks (never originals) showing your payment history. Ask the credit bureaus to add the information to your file. Although credit bureaus aren't required to do so, they often will, although they may charge a fee.

Add Information Showing Stability to Your Report

Your credit history isn't the only thing lenders consider in deciding whether to extend credit. They also want to see stability in your life. If any of the items listed below are missing from your file, consider sending a letter to the credit bureaus asking that the information be added:

- **your current employment**—employer's name and address, and your job title. You may wisely decide not to add this if you think a creditor may sue you or a creditor has a judgment against you. Current employment information may be a green light for a wage garnishment.
- **your previous employment**, especially if you've had your current job less than two years. Include your former employer's name and address and your job title.
- **your current residence**, and if you own it, say so. Not all mortgage lenders report their accounts to credit bureaus. Again, don't do this if you've been sued or you think a creditor may sue you. Real estate is an excellent collection source.
- **your previous residence**, especially if you've lived at your current address less than two years
- **your telephone number**, especially if it's unlisted. If you haven't yet given the credit bureaus your phone number, consider doing so now. A creditor who cannot verify a telephone number is often reluctant to grant credit.
- **your date of birth**. A creditor will probably not grant you credit if it does not know your age. However, creditors cannot discriminate based on age. (See Chapter 18.)
- **your Social Security number**. The credit bureaus use this number to help distinguish between people with similar names.

Credit bureaus aren't required to add any of this information, but they often do. They are most likely to add information on jobs and residences, as that information is used by creditors in evaluating applications for credit. They will also add your telephone number, date of birth, and Social Security

number, because those items help identify you and lessen the chances of “mixed” credit files—that is, getting other people’s credit histories in your file.

Enclose photocopies (never originals) of any documentation that verifies information you’re providing, such as your driver’s license, a canceled check, a bill addressed to you, or a pay stub showing your employer’s name and address. Remember to keep photocopies of all letters you send.

Your Credit Score

Most credit reports include a credit score, but it is not included in the free credit reports. (It is, however, available for free from the creditor when you apply for a mortgage, and in certain other circumstances—see below.) Credit scores are numerical calculations that are supposed to indicate the risk that you will default on your payments. To come up with your score, a company gathers information about your credit history, such as how many accounts you have, whether you pay on time, collection actions against you, and so on, then compares you to others with a similar profile and awards you points based on your creditworthiness. A high credit score indicates that you are a low risk—in other words, that you are more likely to repay a loan—and a low score indicates potential problems.

Lenders use credit scores to determine whether to extend you new credit, whether to increase or decrease an existing line of credit, whether it will be easy to collect from you on an outstanding account, and even

whether you are likely to file for bankruptcy. The vast majority of mortgage lenders rely on credit scores, as do car dealers, credit card issuers, and insurance companies. Your credit score determines not only whether you’ll get the loan, but also what your interest rate will be: The lower your score, the higher your interest rate.

How Credit Scores Are Calculated

Credit scoring companies use criteria similar to the three Cs when calculating scores. The largest and most ubiquitous credit scoring company is the Fair Isaac Corporation, the company that generates “FICO” scores. The factors Fair Isaac considers in coming up with credit scores include:

- payment history (about 35% of the score). The company looks at such things as whether you’ve paid on time, have any delinquent accounts, have declared bankruptcy, how recent past-due accounts are, or whether you have judgments against you.
- amounts owed on credit accounts (about 30% of the score). Fair Isaac looks at such things as the amounts you owe and how many of your accounts carry a balance. The more you owe compared to your credit limits, the lower your score.
- length of credit history (about 15% of the score). Generally, a longer credit history yields a higher score.
- new credit (about 10% of the score). Fair Isaac likes to see an established credit history rather than a lot of new accounts. And if you have had payment

problems in the past, that you have positive credit history after that. Opening several accounts in a short period of time might indicate a higher risk. Inquiries on your account may also lower your score slightly, depending on the reason. For example, if a number of creditors check your credit report because you are looking for many new sources of credit, that will drop your score more than if you are comparison shopping for a particular type of credit, like a car loan or mortgage. And, as long as you do all of your comparison shopping within about 30 days, it shouldn't have much effect on your score.

- types of credit (about 10% of the score). Fair Isaac is looking for a “healthy mix” of different types of credit, both revolving accounts (such as credit cards) and installment accounts (like a mortgage or car loan).

FICO scores do not include information about your income, your employment history, or whether you are in credit counseling.

Your credit score may differ depending on the company that generates it, the information considered, and the reason why the score is created. Although Fair Isaac is the largest credit scoring company, it isn't the only one. Lenders and credit reporting agencies may use different scoring programs that yield different results. Even using the FICO scoring criteria, your score may differ. For example, the information each of the credit reporting agencies has on you is a bit different, so each might generate a slightly different score. Fair Isaac also offers a variety of FICO scoring formulas that emphasize different aspects

of your credit, which means the score one creditor sees may be different than the score you or another creditor might see.

Most credit scores range from lows of 300 to 400 to highs of 800 to 990, depending on the type of score. FICO scores range from 300 to 850. Fair Isaac estimates that slightly less than 40% of Americans have FICO scores of more than 750, which most lenders would consider to be very good.

Equifax says that the majority of FICO scores usually fall within the 600s and 700s and gives these estimates:

- 20% are above 780
- 20% are in the range of 745–780
- 20% are in the range of 690–745
- 20% are in the range of 620–690
- 20% are below 619.

Another scoring system, VantageScore, was introduced a few years ago by the three major credit reporting agencies; this score ranges from a low of 501 to a high of 990. Like a FICO score, higher numbers mean less risk. VantageScore also provides a letter grade (A, B, C, or F). Because FICO is more familiar, VantageScore can be confusing. For example, a FICO score of 780 is very good, but only fair on the VantageScore scale. VantageScore claims some major credit card companies, banks, and car dealers now use its scoring system.

Equifax Consumer Reporting Agency also uses its own scoring system, the Equifax score, which ranges from 280 to 850.

FICO and VantageScore plan on introducing revised scoring systems in 2011. During the recession many people with high credit scores stopped paying their mortgage when their home values fell below the amount of

their mortgage. The new scoring systems are intended to identify people that might be in that situation. This means that your credit score may be very different from what it was before 2011.

How to Get Your Credit Score

Sometimes, your score must be provided to you in connection with a credit transaction.

When You Apply for a Residential Mortgage

If you apply for a loan on residential property, for example, the mortgage lender must disclose your credit score, the range of possible scores under the scoring model used to generate your score, four key factors that affected your score, the date when the score was generated, and the name of the entity that provided the score (for example, Fair Isaac). The lender must also give you a notice with contact information for the credit reporting agency that provided the score.

Lenders that evaluate loan applications using automated systems may disclose either the system's score and the key factors that affected it or a score from a credit reporting agency. (If you receive a score in this situation, be sure to ask the lender which one it provided—a score from its system or from a credit reporting agency.) Under California law, if a car dealer gets your credit score in connection with your application for a vehicle loan or lease, the dealer must give you your score, information on the range of possible scores, and contact information for the credit reporting agency that supplied the score.

When a Creditor Charges You a Higher Rate

If a creditor charges you a higher annual percentage rate than it charges other consumers, it may have to tell you that, or in the alternative, tell you your credit score and how your score compares to others. (See Chapter 18, “FCRA Required Notices,” for more information.)

When a Creditor Takes an Adverse Action Against You

Beginning July 21, 2011, if a creditor that used your credit report takes an adverse action against you, and if it also used a credit score in making its decision, it must tell you your credit score (and also tell you that you have a right to get a copy of your credit report). (See Chapter 18, “FCRA Required Notices.”)

Paying for Your Credit Score

You can also get your score from Fair Isaac and/or the credit reporting agencies that develop or distribute them, for a cost of about \$15 to \$20. Watch out for extra fees for services like credit monitoring; these can drive up the price. Also watch out for supposedly free or \$1.00 charges for credit scores. The offer may require you to pay for a monthly service, or it might provide you with a score “for educational purposes,” not a score that is really used by creditors.

It may not be worth paying to get your score, however. Because creditors use different scores (and sometimes generate their own), you can't be sure that the score you buy is the one any particular creditor

will rely on. In 2008, for example, *Consumer Reports* paid \$130 to get 11 different credit scores for the same person. The scores differed by up to 72 points and were judged to mean everything from a fair to a good to an excellent credit risk! Their conclusion was that it's probably not worth the money to pay for a credit score.

Tips for Raising Your Credit Score

Fair Isaac offers these tips for raising your credit score:

- Pay your bills on time.
- Make up missed payments and keep all your payments current.
- Maintain low balances on credit cards and other revolving debt.
- Pay off debt rather than transferring it to a new account.
- Don't close unused credit card accounts just to raise your credit score.
- Don't get new credit cards that you don't need.

Other tips are included in "Understanding Your FICO Score" at the Fair Isaac website, www.myfico.com.



RESOURCE

Want more information on credit scores? To keep up on credit scoring developments, visit www.creditscoring.com, a private website devoted to credit scoring. (Be cautious, however; many links are to other sites that want to sell you credit reports or scores.) You can also check out the booklet, "Understanding

Your FICO Score," available from Fair Isaac's website, www.myfico.com. To see how different scores under one scoring system might affect your interest rate, go to www.myfico.com, click on "Education," then "About FICO scores," and follow the link to the calculator.

Build Credit in Your Own Name

If you are married, separated, or divorced, and most of the credit you have is in your spouse's or ex-spouse's name only, you should start to get credit in your name, too.

Getting credit in your own name is also an excellent strategy for repairing your credit if:

- all or more of your financial problems can be attributed to your spouse, or
- you and your spouse have gone through financial difficulties together, but most of your credit was in your spouse's name only.

To understand how this works, you first must learn about which of your spouse's accounts can appear on your report. Here are the rules:

- Credit bureaus must include information about your spouse's account on your credit report in two situations: (1) you and your spouse have a joint account (that is, you both can use it), or (2) you are obligated (responsible for paying) on an account belonging to your spouse, even if your spouse is the primary signor or obligor on the account.
- Credit bureaus cannot include information about your spouse's account on your credit report if the account is not joint or you are not responsible for

paying the account. Review “Who Owes What Debts?” in Chapter 2 to see which debts you may be responsible for, even if they are not joint accounts.

This is usually good news if you are worried that your spouse’s negative credit history may reflect badly on you—delinquent accounts you are not responsible for that are in your spouse’s name only should not appear on your credit report. However, if you are now divorced or separated, and most loans and credit cards were in your spouse’s name only, you won’t have a lengthy history of good credit in your report. You now need to start building good credit in your own name. If you are still married, you can start by making sure that all joint accounts and accounts on which you are obligated to pay appear on your credit report, too. Then, follow the steps outlined in the rest of this chapter to improve your credit.

Ask Creditors to Consider Your Spouse’s Credit History

A credit bureau can include information about your spouse’s positive credit accounts on your credit report only if the account meets one of the two criteria listed above. If you are applying for a loan, credit card, or other type of credit, however, you can always ask the creditor to consider any of your spouse’s accounts that reflect favorably on your creditworthiness, too. For example, if you and your spouse make payments on your spouse’s account with joint checks, bring this to the creditor’s attention. A

creditor doesn’t have to consider this information, but it may.

Use Existing or New Credit Cards

If your financial problems are behind you and you managed to hold onto one of your credit or charge cards, use it and pay your bills on time. Your credit history will improve quickly. Most credit reports show payment histories for two to four years. If you charge something every month or so, no matter how small, and pay every month, your credit report will show steady and proper use of revolving credit.



CAUTION

Charge only a small amount each month and pay it in full. By paying in full, you will avoid interest charges (assuming your card has a grace period). Don’t pay only the minimum—at 17% interest, if you just pay the 2% minimum on a \$1,000 balance, it will take you over seven years and over \$1,760 to pay off the debt.

Applying for Credit Cards

The best way to develop a positive credit history is to obtain credit and make timely payments. But don’t try to do this while you are steeped in financial trouble. You’ll be more likely to get credit from a subprime predatory lender (see “Subprime Mortgages,” below) and be in danger of getting into deeper debt. Getting a new credit card before you’re on your feet may send you

Subprime Mortgages

During the heyday of the subprime lending bubble, lenders sometimes gave borrowers letter grades, with A supposedly for those who qualified for “prime” loans. Those loans provided lower interest rates that were fixed for 30 years, lower fees, and generally better terms. These lenders categorized other borrowers as qualified for “subprime” loans and assigned them different letter grades, depending on the lender, which ranged from A– to D. The subprime loans offered these borrowers often had prepayment penalties, high fees and interest rates, were not fixed for 30 years, and had a low teaser rate that readjusted to much higher variable rates after a year or two.

Lenders characterized borrowers differently depending on such things as how recently they had a bankruptcy discharged, how recently their home had been foreclosed, and how often they had been late on their mortgage payments, as well as a credit score.

In effect, the lower the borrower’s seeming ability to pay, the higher the cost of the loan to that borrower. In practice, however, subprime lenders offered their subprime terms to many whose credit rating should have qualified them for prime loans. Although subprime lending is not as available due to the economic recession beginning in 2008, some lenders are quite willing to make you think you can only qualify for subprime terms are still around.

This is a concrete example of why it is so important to understand your credit report and what makes for good credit. Many borrowers don’t have a clue whether they actually have “good” or “bad” credit. Some borrowers who think they have bad credit may actually have good enough credit to apply for an “A” loan. But they apply to a subprime lender because they fear denial by a prime lender or because only subprime lenders have a presence in their area. Mortgage industry groups have estimated that up to 50% of all subprime borrowers could have qualified for less-costly loans on better terms.

All of this means that you should have a realistic understanding of your credit before you apply for a mortgage. Review your credit report and understand the strengths and weaknesses of your credit. Then apply to the best lender (the one making the highest-quality loans) you can. Also, when you apply for a mortgage, the lender must share with you the credit score on which it relied (see above) and the main factors involved in the credit score. Be sure to compare that information with what is in your credit report and check to see that your credit report is accurate and complete.

Subprime loans also tend to be concentrated in minority neighborhoods, suggesting that in some cases, discrimination could be a factor. (If you suspect discrimination, see the additional discussion in Chapter 18.)

down the same path that got you into trouble in the first place

However, if you are ready to start using credit again, go ahead and apply for a credit card. It's often easiest to obtain a card from a department store or gasoline company. They'll usually open your account with a very low credit line. If you start with one credit card, charge items, and pay the bill on time, other companies will issue you cards. When you use department store and gasoline cards, try not to carry a balance from one month to the next. The interest rate on these cards is very high.

Next, apply for a regular bank credit card, such as a Visa card, MasterCard, American Express card, or Discover card. Competition for new customers has been fierce among card issuers, and you may be able to find a card with relatively low initial rates. Depending on how bad your credit history is, however, you may qualify only for a low credit line or a card with a high interest rate and high annual fee. If you use the card and make your payments, however, after a year or so you can apply for an increase in your line of credit and possibly a reduction in your interest rate or annual fee. (See Chapter 10 for guidelines for avoiding costly traps when applying for credit cards.)

Here are some additional tips to help you when you apply for credit cards or an increased credit limit.

Be consistent with the name you use. Either use your middle initial always or never. Always use your generation (Jr., Sr., II, III, and so on).

Take advantage of preapproved gasoline, department store, and bank credit cards. If

your credit is shot, you may not have the luxury of shopping around. (But see Chapter 10 for traps to avoid.)

Be honest, but appear sympathetic. On applications, paint a picture of yourself in the best light. Lenders are especially apt to give less weight to past credit problems that were out of your control, such as a job layoff, illness or death in the family, recent divorce, or new child support obligation.

Apply for credit when you are most likely to get it. For example, apply when you are working, when you've lived at the same address for at least a year, and when you haven't had an unusually high number of inquiries on your credit report in the last two years. A lot of inquiries over several months is a sign that you are either desperate for credit or preparing to commit fraud. (Several inquiries within a month, for example, from car dealers, are not a problem because they suggest you were just shopping for a particular purchase.)

Apply for credit from creditors with whom you've done business. For example, your phone company or insurance company may offer Visa or MasterCards to their customers. If you have a good relation with your bank, it may offer you a Visa or MasterCard.

Don't get swept up by credit card gimmicks. Before applying for a credit card that gives you rebates, credit for future purchases, or other "benefits," make sure you will benefit by the offer. Some are good deals, especially if you like to travel and can get a card that helps you build up frequent flyer miles. But in general, a card with no annual fee, low interest, and low fees usually beats the cards with deals.

Look carefully at preapproval solicitations for nonbank cards. A gold or platinum card with a high credit limit may be nothing more than a card that lets you purchase items through catalogs provided by the company itself. No other merchant accepts these cards, and the company won't report your charges and payments to the credit bureaus. You usually have to pay a fee for the card and then another one for the catalog. And the items in the catalogs are usually high priced and of poor quality.

Protect yourself. Once you receive a credit card, protect yourself and your efforts to repair your credit by following these suggestions:

- **Send your creditors a change of address when you move.** Many creditors provide change of address boxes on their monthly bills. For your other creditors, you can send a letter, call the customer service phone number, or use a post office change of address postcard. Don't let your monthly statements go to your old address. You may miss making payments on time, or someone may steal your statement and use your identifying information to gain access to your account or obtain credit in your name.
- **If you need an increase in your credit limit, ask for it.** Many creditors will close accounts or charge over-limit fees on customers who exceed their credit limits. Pay close attention; if you're charging to the limit on your credit card, you may be heading for financial trouble.
- **Take steps to protect your cards.** Sign your cards as soon as they arrive. If you have a personal identification number

(PIN) that allows you to take cash advances, keep the number in your head; never write it down near your credit card. Make a list of your credit card issuers, the account numbers, and the issuer's phone numbers so you can quickly call if you need to report a lost or stolen card. Keep this list in a safe place at home.

- **Don't give your credit card or checking account number to anyone over the phone, unless you placed the call and are certain of the company's reputation.** Never, never, never give your credit card or checking account number to someone who calls you and tries to sell you something or claims to need your account number to send you a "prize." Never give your credit card number, checking account number, or personal information to a caller who claims to represent a company you do business with and wants to "confirm" or "update" your account information. The same is true for Internet inquiries like this. *These are all scams.*

For more on credit cards, see Chapter 10.

Cosigners and Guarantors

A cosigner is someone who promises to repay a loan or credit card charges if the primary debtor defaults. Similarly, a guarantor promises to pay if the primary debtor does not. Usually, for consumer credit, if your credit is not good enough, the creditor is likely to want a cosigner. Typically, a guarantor is used for business credit. Usually a credit account will be reported

under both your name and the cosigner's name. But to be sure, ask the creditor if it will report the account to credit reporting agencies under your name, as well as under the cosigner's name, and request a written statement to that effect.

Cosigners and guarantors must understand their obligations before signing on. If you don't pay the debt, or you erase it in bankruptcy, the cosigner or guarantor remains fully liable. See Chapter 11 for more information.

Secured Credit Cards

Many people with poor credit histories are denied regular credit cards. If your application is rejected, consider whether you truly need a credit card. Millions of people get along just fine without them. If you decide that you really need a card—for example, to reserve hotel rooms and rent cars—then you can apply for a secured credit card. With a secured credit card, you deposit money into a savings account in a credit union or bank. It freezes the account while you have the card, and you will get a credit limit for a percentage of the amount you deposit—as low as 50% and as high as 120%. Depending on the credit union or bank, you'll be required to deposit as little as a few hundred dollars or as much as a few thousand. If you fail to pay your credit card debts, the bank can use the money in your account to cover your charges.

Unfortunately, secured credit cards can be expensive. Many banks charge hefty application and processing fees in addition to an annual fee. Also, the interest rate on

secured credit cards is often close to 20%, while you may earn only 2% or 3% (or less) on the money you deposit. And some banks have eliminated the grace period—that is, interest on your balance begins to accrue on the date you charge, not 25 days later. (If you find a card with a grace period and pay your bill in full each month, you can avoid the interest charges.) Another problem with secured credit cards is that some creditors don't accept or give much weight to credit history established with a secured credit card.

Before you sign up for a card, ask the card issuer if it reports to the three major credit bureaus. If the issuer doesn't, you've lost an important benefit of having a secured card. Some smaller issuers don't report to the credit bureaus, but most major banks do. Your best bet is to get a secured credit card from a credit union that does report to consumer reporting agencies, because credit union interest rates and fees are usually lower than those offered by banks.

Try to get a secured credit card with a conversion option. This lets you convert the card into a regular credit card after several months or a year, if you use the secured card responsibly. And a regular credit card typically has a lower interest rate and annual fees than a secured card.

Use the secured credit card to make smallish purchases that you can pay off each month. Always pay on time. This will help you build your credit. After you pay on time for a year, you may be able to qualify for an unsecured credit card with a lower interest rate. Then you can use the information in Chapter 10 to find the best card you can qualify for.

Shop around before getting a secured card. For lists of banks issuing secured credit cards, including their rates and terms, do some research on the Internet. Websites such as www.bankrate.com and www.cardtrack.com provide a wealth of information about available secured credit cards, and www.creditcardconnection.org has information about many credit union credit cards. Also check with small local banks or credit unions, which may have better terms.

Before committing, make sure you really have no choice. You may be able to get a less-expensive, unsecured card just as easily. Even if you've had credit problems or filed for bankruptcy, you may still get lots of offers for unsecured cards in the mail, often with much better terms than secured cards.



CAUTION

Don't use your home as collateral.

If you do opt for a secured credit card, make sure it isn't secured by your home. If it is, and you get behind on your card payments, you could lose your home.

Open Deposit Accounts

Creditors look for bank accounts as a sign of stability. They also look for bank accounts as a source of how you will pay your bills. If you fill out a credit application and cannot provide a checking account number, you probably won't get credit.

A savings or money market account, too, will improve your standing with creditors. Even if you never deposit additional money

Don't Carry Too Many Credit Cards

Once you succeed in getting a credit card, you might be hungry to apply for many more cards. Not so fast. Having too much credit may have contributed to your debt problems in the first place. Also, opening a lot of new credit in a short time can negatively affect your credit rating. Although there may be no ideal number of cards, some credit experts say you only need two cards, one you regularly use and one for a backup. If you want one to keep business expenses separate, then a third one is useful. At most one or two bank credit cards, maybe one department store card, and one gasoline card should be all you need. Your inclination may be to charge everything on your bank card and not bother using a department store or gasoline card. Some experts say that when creditors look in your credit file, they want to see that you can handle more than one credit account at a time. But be careful you don't build up interest charges on these cards; use them and pay the bill in full each month.

Creditors frown on applicants who have a lot of open credit. So keeping many cards may mean that you'll be turned down for other credit—perhaps credit you really need. And if your credit applications are turned down, your file will contain inquiries from the companies that rejected you. Your credit file will look like you were desperately trying to get credit—something creditors never like to see.

into the account, creditors assume that people who have savings or money market accounts use them. Having an account reassures creditors of two things: You are making an effort to build up savings, and if you don't pay your bill and the creditor must sue you to collect, it has a source from which to collect its judgment.

Just because you've had poor credit history, you shouldn't be denied an account. You might be denied an account, however, if you have a bad check-writing history. Check verification companies keep track of banks' experiences with their customers, much as credit bureaus do for creditors. Most banks will check your check-writing history with a check verification company before they will open an account for you. If you are denied a bank account because of information provided by a check verification company, call the company to discuss the problem and try to provide information that resolves it. If there is incomplete or inaccurate information in the company's files, you can dispute it, just as you can with a credit bureau.

Some popular check verification companies include:

- FIS (800-237-4851)
- CrossCheck (800-637-1884)
- ChexSystems, www.consumerdebit.com (800-428-9623), and
- Telecheck, www.telecheck.com (800-366-2425).

Checking account information is not included in credit reports prepared by the three major credit reporting agencies.

If you open a checking account, be very careful not to bounce the checks you write. A federal law called "Check 21" allows banks to

process electronic images of checks instead of the paper originals. One result is that checks clear much faster than most of us are used to, increasing the risk that they will bounce. It's therefore more important than ever not to write a check unless the funds are already in the account to cover it. (For more information on Check 21, go to www.consumersunion.org/finance/ckclear1002.htm.)

If you bounce a check to a creditor, it most likely will report a late or missed payment to a credit bureau, jeopardizing your hard work repairing your credit. A history of bounced checks also may make it harder to open bank accounts in the future.

Ask for a list of all charges there may be on an account before you agree to open one. Compare the fees each bank charges and choose one that works with the way you'll use your account. If you use ATMs a lot, for example, look for a bank that does not charge for using its own ATMs and reimburses you for ATM charges from other banks. Find out the minimum balance to waive the monthly charge (many banks waive the minimum if you have your paycheck or other income directly deposited into the account).

Work With Local Merchants

Another way to rebuild your credit is to approach a local merchant (such as a jewelry or furniture store) and arrange to purchase an item on credit. Many local stores will work with you in setting up a payment schedule, but be prepared to put down a deposit of up to 30% or to pay a high rate of interest. If you still don't qualify, the merchant might agree to

give you credit if you get someone to cosign or guarantee the loan (see “Cosigners and Guarantors,” above).

Or, you may be able to get credit at the store later, by first buying an item on layaway. When you purchase an item on layaway, the seller keeps the merchandise until you fully pay for it. Only then are you entitled to pick it up. One advantage of layaway is that you don’t pay interest. One disadvantage is that it may be months before you actually get the item. This might be fine if you’re buying a dress for your cousin’s wedding that is eight months away. It isn’t so fine if your mattress is so shot that you wake up with a backache every morning. It also may be a problem if the store files for bankruptcy. You should be able to get your money back as it was not the store’s money until it gave you the item, but it may not be that easy to fight about it in bankruptcy.

Layaway purchases are not reported to credit bureaus. If you purchase an item on layaway and make all the payments on time, however, the store may be willing to issue you a store credit card or store credit privileges.

Obtain a Credit Union or Bank Loan

One way to rebuild your credit is to take some money you’ve saved and open a savings account. Then, ask the bank to give you a loan against the money in your account. In exchange, you have no access to your money—you give your passbook to the bank and the bank won’t give you an ATM card for

the account—so there’s no risk to the bank if you fail to make the payments. If the bank doesn’t offer these loans, called passbook loans, apply for a personal loan and offer either to get a cosigner or to secure it against some collateral you own (*not your house*).

No matter what type of loan you get, be sure you know the following:

- **Does the bank report these loan payments to credit bureaus?** This is key; the whole reason you take out the loan is to rebuild your credit. If the bank doesn’t report your payments to a credit bureau, there’s no reason to take out a loan.
- **What is the minimum deposit amount for a passbook loan?** Some banks won’t give you a loan unless you have \$3,000 in an account; others will lend you money on \$50. Find a bank that fits your budget.
- **What is the interest rate?** The interest rate on the loan is usually much higher than what people with good credit pay. Yes, this means you’ll lose a little money on the transaction, but it can be worth it if you’re determined to rebuild your credit.
- **What is the maximum amount you can borrow?** On passbook loans, banks won’t lend you 100% of what’s in your account; most will lend you between 80% and 95%.
- **What is the repayment schedule?** Banks usually give you one to five years to repay the loan. Some banks have no minimum monthly repayment amount on passbook loans; you could pay nothing for nearly the entire loan period and then pay the entire balance in the last month.



TIP

Take some time to repay the loan.

Even if you could pay back the loan in only one or two payments, don't. Pay it off over at least 12 months so that monthly installment payments appear in your credit file. Also, it's extremely important not to miss a loan payment. If you do, the bank will report the late or missed payment to a credit bureau, and you will have set back your efforts to repair your credit.

Avoid Credit Repair Clinics

You've probably seen ads for companies that claim they can fix your credit, qualify you for a loan, or get you a credit card. Their pitches are tempting, especially if your credit is bad and you desperately want to buy a car or house.

Don't be tempted by the ads. Many of these companies' practices are fraudulent, deceptive, and illegal.

For example, some suggest that you create a new identity by applying for an IRS Employer Identification Number (EIN), a nine-digit number that resembles a Social Security number, and use it instead of your Social Security number when you apply for credit. This is illegal. It's a federal crime to make false statements on an application for a loan or credit and to misrepresent your Social Security number and obtain an EIN from the IRS under false pretenses. If that's not bad enough, using an EIN instead of your Social Security number won't even help you repair your credit—and will prevent you from earning Social Security benefits. This scam is called "Credit File Segregation"

or "File Segregation"; you'll see it advertised in classified ads and on TV, radio, and the Internet.

Credit repair clinics devise new illegal methods just as soon as consumer protection agencies catch onto their old ones.

Even assuming that a credit repair company is legitimate, don't listen to its come-ons. These companies can't do anything for you that you can't do yourself or with the help of a nonprofit debt counselor (see Chapter 19). What they will do, however, is charge you between \$250 and \$5,000 for their unnecessary services.

Here's what credit repair clinics claim to be able to do for you.

Remove incorrect information from your credit file. You can do that yourself under the Fair Credit Reporting Act, using the information in this chapter.

Remove correct, but negative, information from your credit file. Negative items in your credit report can legally be reported for seven or ten years (or longer in connection with loan or insurance applications for \$150,000 and up and in connection with employment applications for jobs paying \$75,000 or more), as long as they are correct. No one can wave a wand and make them go away. One tactic of credit repair services is to try to take advantage of the law requiring credit bureaus to verify information if the customer disputes it. Credit repair clinics do this by challenging every item in a credit report—negative, positive, or neutral—with the hope of overwhelming the credit bureau into removing information without verifying it. Credit bureaus are aware of this tactic and can legally dismiss these challenges on the

ground that they are frivolous. You are better off reviewing your report and selectively challenging the outdated, incorrect, or incomplete items.

Even if a credit bureau removes information that it had the right to include in your file, it's only a temporary removal. Most correct information reappears after 30 to 60 days when the creditor that first reported the information to the credit bureaus reports it again.

Get outstanding debt balances and court judgments removed from your credit file. Credit repair clinics often advise debtors to pay outstanding debts if the creditor agrees to remove the negative information from your credit file. This is certainly a negotiation tactic you want to consider (see Chapter 5), but you don't need a credit repair clinic for this advice.

Get a major credit card. Credit repair clinics can give you a list of banks that offer secured credit cards. While this information is helpful in rebuilding credit, it's not worth hundreds or thousands of dollars—you can find it yourself online (see “Secured Credit Cards,” above).

Federal law regulates for-profit credit repair clinics under the Credit Repair Organizations Act (CROA). (15 U.S.C. §§ 1679 and following.) Some dubious credit repair clinics have tried to get around these regulations by setting themselves up as nonprofits, but they still take your money and provide poor results—or do nothing for you that you couldn't do for yourself.

Under the federal law, a credit repair clinic must:

- give you a written statement of your rights under the Fair Credit Reporting Act
- accurately represent what it can and cannot do
- not collect any money until all promised services are performed
- provide a written contract, and
- let you cancel the contract without penalty within three business days of signing.

You cannot waive your rights under the CROA, even if you sign an agreement that claims to do so. A contract that doesn't comply with the CROA's requirements is void.

Any lawsuit you bring against a credit repair clinic for violation of federal law must be filed within five years of the violation (longer in some circumstances). A court may award actual damages, punitive (meant to punish) damages, and attorneys' fees.

A few states provide additional protections to consumers who use credit repair clinics. For example, some states give you more than three days to cancel the credit repair contract, require the credit repair clinic to perform the promised services within a specific amount of time, and require that the credit repair clinic inform you about available nonprofit credit counseling services.

The chart below lists the state laws that provide consumer protections stronger than the federal law. To find out the details of the additional protections in your state, look up the code sections listed in the chart. For information on how to do this, see Chapter 19.

Additional State Protections Concerning Credit Repair Clinics

Arizona

Ariz. Rev. Stat. Ann. §§ 44-1701 to 44-1712

Credit repair service may not charge or collect a fee for referring consumer to a retail seller who will or may extend credit that is on substantially the same terms as those available to the general public.

Cancellation rights. Any payment must be returned within 15 days of receipt of cancellation notice.

Arkansas

Ark. Code Ann. §§ 4-91-101 to 4-91-109

Credit repair service may not charge or collect a fee for referring consumer to a retail seller who will or may extend credit that is on substantially the same terms as those available to the general public.

Cancellation rights. May cancel contract within five days of signing. Any payment must be returned within ten days of receipt of cancellation notice.

California

Cal. Civ. Code §§ 1789.10 to 1789.22

Credit repair service may not charge or collect a fee for referring consumer to a retail seller who will or may extend credit that is on substantially the same terms as those available to the general public or on the same terms that would have been extended without the assistance of the credit repair organization; submit a debtor's dispute to a consumer credit reporting agency without the debtor's knowledge; or use a consumer credit reporting agency's telephone system or toll-free number

to represent the caller as the debtor without the debtor's authorization.

Cancellation rights. May cancel contract within five working days of signing.

Time limit for performing services. Six months.

Colorado

Colo. Rev. Stat. §§ 12-14.5-101 to 12-14.5-113

Cancellation rights. May cancel contract within five working days of signing. Any payment must be returned within ten days of receipt of cancellation notice.

Connecticut

Conn. Gen. Stat. Ann. § 36a-700

State protections do not exceed federal laws.

Delaware

Del. Code Ann. tit. 6, §§ 2401 to 2414

Credit repair service may not charge or collect a fee for referring consumer to a retail seller who will or may extend credit that is on substantially the same terms as those available to the general public.

Credit repair service must disclose a complete and accurate statement of the availability of nonprofit credit counseling services.

Cancellation rights. Any payment must be returned within ten days of receipt of cancellation notice.

Time limit for performing services. 180 days.

Additional State Protections Concerning Credit Repair Clinics (continued)

District of Columbia

D.C. Code Ann. §§ 28-4601 to 28-4608

Credit repair service may not charge or collect a fee for referring consumer to a retail seller who will or may extend credit that is on substantially the same terms as those available to the general public.

Cancellation rights. May cancel contract within five calendar days of signing. Must be reimbursed within ten days of receipt of cancellation notice.

Florida

Fla. Stat. Ann. §§ 817.701 to 817.706

Credit repair service may not charge or collect a fee for referring consumer to a retail seller who will or may extend credit that is on substantially the same terms as those available to the general public.

Cancellation rights. May cancel contract within five days of signing. Any payment must be returned within ten days of receipt of cancellation notice.

Hawaii

Haw. Rev. Stat. § 481B-12

State protections do not exceed federal laws.

Idaho

Idaho Code §§ 26-2222, 26-2252

Credit repair service is required to obtain a license and bond from the state.

Illinois

815 Ill. Comp. Stat. §§ 605/1 to 605/16

Credit repair service may not charge or collect a fee for referring consumer to a retail

seller who will or may extend credit that is on substantially the same terms as those available to the general public.

Cancellation rights. Any payment must be returned within ten days of receipt of cancellation notice.

Indiana

Ind. Code Ann. §§ 24-5-15-1 to 24-5-15-11

Credit repair service may not charge or collect a fee for referring consumer to a retail seller who will or may extend credit that is on substantially the same terms as those available to the general public.

Credit repair service must disclose a complete and accurate statement of the availability of nonprofit credit counseling services.

Cancellation rights. Any payment must be returned within ten days of receipt of cancellation notice or any other written notice.

Iowa

Iowa Code §§ 538A.1 to 538A.14

Credit repair service may not charge or collect a fee for referring consumer to a retail seller who will or may extend credit that is on substantially the same terms as those available to the general public.

Cancellation rights. Any payment must be returned within ten days of receipt of cancellation notice.

Kansas

Kan. Stat. Ann. §§ 50-1116 to 520-1135

Credit repair service must comply with an extensive list of requirements, including

Additional State Protections Concerning Credit Repair Clinics (continued)

educating debtors, specifying the scope of an agreement, itemizing fees, and disclosing the consumer's rights.

Credit repair service may not delay payments, make false promises or deceptive statements, give or receive compensation for referrals, or collect fees above \$20 per month from the customer (after a \$50 initial consultation fee).

Louisiana

La. Rev. Stat. Ann. §§ 9:3573.1 to 9:3573.17

Credit repair service must disclose a complete and accurate statement of the availability of nonprofit credit counseling services, disclose all payments expected from the consumer, give estimated completion date, and wait for payment until services are complete.

Cancellation rights. May cancel contract within five days of signing. Any payment must be returned within ten days of receipt of cancellation notice.

Maryland

Md. Code Ann. [Com. Law] §§ 14-1901 to 14-1916

Credit repair service may not charge or collect a fee for referring consumer to a retail seller who will or may extend credit that is on substantially the same terms as those available to the general public or assist a consumer to obtain credit at a rate of interest which is in violation of federal or state maximum rate; charge or receive compensation in connection with an extension of credit that, when combined with the interest rate would exceed the interest rate permitted.

Cancellation rights. Any payments must be returned within ten days of receipt of cancellation notice.

Massachusetts

Mass. Gen. Laws ch. 93, §§ 68A to 68E

Credit repair service may not charge or collect a fee for referring consumer to a retail seller who will or may extend credit that is on substantially the same terms as those available to the general public.

Cancellation rights. Any payment must be returned within ten days of receipt of cancellation notice.

Michigan

Mich. Comp. Laws §§ 445.1821 to 445.1825

Credit repair service may not charge or collect a fee for referring consumer to a retail seller who will or may extend credit that is on substantially the same terms as those available to the general public, submit a debtor's dispute to a consumer credit reporting agency without the debtor's knowledge, or provide a service that is not pursuant to a written contract.

Time limit for performing services. 90 days.

Minnesota

Minn. Stat. Ann. §§ 332.52 to 332.60

Credit repair service may not charge or collect a fee for referring consumer to a retail seller who will or may extend credit that is on substantially the same terms as those available to the general public.

Credit repair service must disclose the name and address of any person who directly or indirectly owns or controls a 10% or greater

Additional State Protections Concerning Credit Repair Clinics (continued)

interest in the credit services organization; any litigation or unresolved complaint filed within the preceding five years with the state, any other state, or the United States, or a notarized statement that there has been no such litigation or complaint; and the percentage of customers during the past year for whom the credit services organization fully and completely performed the services it agreed to provide.

Cancellation rights. May cancel contract within five days of signing. Any payment must be returned within ten days of receipt of cancellation notice.

Missouri

Mo. Rev. Stat. §§ 407.635 to 407.644

Credit repair service may not charge or collect a fee for referring consumer to a retail seller who will or may extend credit that is on substantially the same terms as those available to the general public.

Credit repair service must disclose a complete and accurate statement of the availability of nonprofit credit counseling services.

Cancellation rights. Any payment must be returned within ten days of receipt of cancellation notice.

Montana

Mont. Code Ann. §§ 30-14-2001 to 30-14-2015

Credit repair service may not purchase any debt or obligation of a consumer; lend money or provide credit to a consumer; or obtain a mortgage or other security interest in any property of a consumer.

Cancellation rights. May cancel contract with ten days' notice.

Nebraska

Neb. Rev. Stat. §§ 45-801 to 45-815

Credit repair service may not charge or collect a fee for referring consumer to a retail seller who will or may extend credit that is on substantially the same terms as those available to the general public.

Cancellation rights. Any payment must be returned within ten days of receipt of cancellation notice.

Time limit for performing service. 180 days.

Nevada

Nev. Rev. Stat. Ann. §§ 598.741 to 598.787

Credit repair service may not charge or collect a fee for referring consumer to a retail seller who will or may extend credit that is on substantially the same terms as those available to the general public, submit a debtor's dispute to a consumer credit reporting agency without the debtor's knowledge, or call a consumer credit reporting agency and represent the caller as the debtor.

Credit repair service must disclose the availability of any nonprofit associations that provide similar services, with phone numbers, including toll-free numbers if available.

Cancellation rights. May cancel contract within five days of signing.

New Hampshire

N.H. Rev. Stat. Ann. §§ 359-D:1 to 359-D:11

Credit repair service may not charge or collect a fee for referring consumer to a retail seller who will or may extend credit that is on substantially the same terms as those available to the general public.

Additional State Protections Concerning Credit Repair Clinics (continued)

Cancellation rights. May cancel contract within five days of signing. Any payment must be returned within five days of receipt of cancellation notice.

New York

N.Y. Gen. Bus. Law §§ 458-a to 458-k

Credit repair service is required to annex a copy of the consumer's current credit report to the contract and clearly mark the adverse entries proposed to be modified.

North Carolina

N.C. Gen. Stat. §§ 66-220 to 66-226

Credit repair service may not charge or collect a fee for referring consumer to a retail seller who will or may extend credit that is on substantially the same terms as those available to the general public.

Cancellation rights. Any payment must be returned within ten days of receipt of cancellation notice.

Ohio

Ohio Rev. Code Ann. §§ 4712.01 to 4712.99

Credit repair service may not charge or collect a fee for referring consumer to a person that extends credit, except when credit has actually been extended as a result of the referral; submit the debtor's disputes to a consumer reporting agency without the debtor's signed, written authorization and positive identification; or contact a consumer reporting agency to submit or obtain information about a debtor, stating or implying to be the debtor or debtor's attorney, guardian, or other legal representative.

Credit repair service must disclose a complete and accurate statement of the availability of nonprofit budget and debt counseling services; the percentage of customers during the past year for whom the credit services organization fully and completely performed the services it agreed to provide.

Time limit for performing service. 60 days.

Oklahoma

Okla. Stat. Ann. tit. 24, §§ 131 to 148

Credit repair service may not charge or collect a fee for referring consumer to a retail seller who will or may extend credit that is on substantially the same terms as those available to the general public.

Cancellation rights. May cancel contract within five days of signing. Any payment must be returned within ten days of receipt of cancellation notice.

Oregon

Or. Rev. Stat. §§ 647.662

Credit repair service may not charge or collect a fee for referring consumer to a retail seller who will or may extend credit that is on substantially the same terms as those available to the general public.

Pennsylvania

73 Pa. Cons. Stat. Ann. §§ 2181 to 2192

Credit repair service may not charge or collect a fee for referring consumer to a retail seller who will or may extend credit that is on substantially the same terms as those available to the general public.

Cancellation rights. May cancel contract within five days of signing. Any payment

Additional State Protections Concerning Credit Repair Clinics (continued)

must be returned within 15 days of receipt of cancellation notice.

Tennessee

Tenn. Code Ann. §§ 47-18-1001 to 47-18-1011

Credit repair service may not charge or collect a fee for referring consumer to a retail seller who will or may extend credit that is on substantially the same terms as those available to the general public; use a program or plan which charges installment payments directly to a credit card prior to full and complete performance of the services it has agreed to perform.

Credit repair service must disclose a complete and accurate statement of the availability of nonprofit credit counseling.

Cancellation rights. May cancel contract within five business days of signing. Any payment must be returned within ten days of receipt of cancellation notice.

Texas

Tex. Fin. Code Ann. §§ 393.001 to 393.505

Credit repair service may not charge or collect a fee for referring consumer to a retail seller who will or may extend credit that is on substantially the same terms as those available to the general public.

Credit repair service must disclose a complete and accurate statement of the availability of nonprofit credit counseling services.

Cancellation rights. Any payment must be returned within ten days of receipt of cancellation notice.

Time limit for performing service. 180 days.

Utah

Utah Code Ann. §§ 13-21-1 to 13-21-9

Credit repair service may not charge or collect a fee for referring consumer to a retail seller who will or may extend credit that is on substantially the same terms as those available to the general public.

Cancellation rights. May cancel contract within five days of signing. Any payment must be returned within ten days of receipt of cancellation notice.

Virginia

Va. Code Ann. §§ 59.1-335.1 to 59.1-335.12

Credit repair service may not charge or collect a fee for referring consumer to a retail seller who will or may extend credit that is on substantially the same terms as those available to the general public.

Credit repair service must disclose: A statement in writing and posted at place of business that the consumer does not have to pay any fees or charges until all services been performed completely (except for a subscription agreement requiring periodic payments).

Cancellation rights. Any payment must be returned within ten days of receipt of cancellation notice.

Washington

Wash. Rev. Code Ann. §§ 19.134.010 to 19.134.900

Credit repair service may not charge or collect a fee for referring consumer to a retail seller who will or may extend credit that is on substantially the same terms as those available to the general public.

Additional State Protections Concerning Credit Repair Clinics (cont'd)

Cancellation rights. May cancel contract within five days of signing. Any payment must be returned within ten days of receipt of cancellation notice.

West Virginia

W.Va. Code §§ 46A-6C-1 to 46A-6C-12

Credit repair service may not charge or collect a fee for referring consumer to a retail seller who will or may extend credit that is on substantially the same terms as those available to the general public.

Credit repair service must disclose a complete and accurate statement of the availability of nonprofit credit counseling services.

Cancellation rights. Any payment must be returned within ten days of receipt of cancellation notice.

Time limit for performing service. 180 days.

Wisconsin

Wis. Stat. Ann. §§ 422.501 to 422.506

Credit repair service may not charge or collect a fee for referring consumer to a retail seller who will or may extend credit that is on substantially the same terms as those available to the general public.

Cancellation rights. May cancel contract within five days of signing. Any payment must be returned within 15 days of receipt of cancellation notice.



Illegal Credit Discrimination

Basic Protections	394
Sex Discrimination	395
Marital Status Discrimination.....	395
Sexual Orientation Discrimination	396
Race Discrimination	396
National Origin Discrimination.....	396
Age Discrimination	397
Postbankruptcy Discrimination.....	397
Your Rights to Notice Regarding Credit Decisions	398
ECOA Required Credit Notices.....	398
FCRA Required Notices	399
If You Are Denied Credit or Offered Expensive Credit Terms	400
Lawsuits Based on Credit Discrimination or Notice Violations.....	402

“... prejudice marks a mental land mine.”

—Gloria Steinem,
feminist and author, 1934–

Several powerful federal and state laws prohibit discrimination in credit transactions. If you think that a creditor has discriminated against you on a prohibited basis, you can complain to the Federal Trade Commission, the federal agency that regulates the particular creditor, your state consumer protection office, and, beginning on July 21, 2011, the federal Consumer Financial Protection Bureau. If the discrimination is related to housing, contact the Department of Housing and Urban Development at 800-669-9777 or go to www.hud.gov and click on “File a Fair Housing Discrimination Complaint.” You may also want to contact an attorney for help. See Appendix A for more potential places to lodge a complaint.

Basic Protections

The Equal Credit Opportunity Act (ECOA, 15 U.S.C. §§ 1691 and following) and Regulation B (12 C.F.R. § 202 and following) are quite broad in scope. They prohibit discrimination in any part of a credit transaction, including:

- applications for credit
- credit evaluation
- restrictions in granting credit, such as requiring collateral or security deposits
- credit terms
- loan servicing
- treatment upon default, and
- collection procedures.

The ECOA also requires creditors to give you certain notices if you are granted or denied credit, or granted credit on different terms from what you requested. These notices may be combined with notices required under the Fair Debt Collection Practices Act. (See below, “Your Rights to Notice Regarding Credit Decisions.”)

The ECOA prohibits a creditor from refusing to grant credit because of your:

- race or color
- national origin
- sex
- marital status
- religion
- age, or
- public assistance status.

The federal Fair Housing Act (FHA) (42 U.S.C. §§ 3601–3631) prohibits discrimination in residential real estate transactions. It covers loans to purchase, improve, or maintain your house and loans in which your home is used as collateral. Other provisions of the FHA prohibit discrimination in the rental housing market. Like the ECOA, the FHA prohibits discrimination based on race, color, religion, national origin, and sex. The FHA prohibits discrimination based on familial status (similar to marital status under the ECOA), and disability, but does not protect against discrimination based on age or public assistance status.

Other federal laws provide protections in addition to the ECOA and FHA. For example, the Community Reinvestment Act (12 U.S.C. §§ 2901 and following) can be used to combat discrimination by banks and lenders. State antidiscrimination laws often provide even more protection than the federal laws.

For example, some states prohibit arbitrary discrimination on the basis of occupation, personal characteristics, political affiliation, or sexual orientation. You can check with your state consumer protection office or do some research on your own (see Chapter 19) to see if there are additional protections in your state.

Sex Discrimination

The ECOA, the FHA, and many state laws prohibit credit discrimination based on sex. This category often overlaps with the “marital status” category.

Examples of prohibited sex discrimination include:

- rating female-specific jobs (such as waitress) lower than male-specific jobs (such as waiter) for the purpose of obtaining credit
- denying credit because an applicant's income comes from sources historically associated with women—for example, part-time jobs, alimony, or child support (however, a creditor may ask you to prove that you have received alimony, child support, or separate maintenance consistently)
- requiring married women who apply for credit alone to provide information about their husbands while not requiring married men to provide information about their wives, and
- denying credit to a pregnant woman who anticipates taking a maternity leave.

However, a creditor is allowed to ask your sex when you apply for a real estate

loan. The federal government collects this information for statistical purposes. Other creditors may ask for this information as well, although providing it is optional, and the creditor can use the information only to check its own practices for discrimination.

Marital Status Discrimination

The ECOA and many state laws prohibit discrimination based on marital status.

The FHA's similar provision prohibits discrimination based on familial status.

These laws prohibit a creditor from requiring an applicant's spouse to cosign on an individual account as long as no jointly held or community property is involved and the applicant meets the creditor's standards on his or her own.

These laws also prohibit a creditor from asking about your spouse or former spouse when you apply for your own credit, unless any of the following is true:

- Your spouse will be permitted to use the account.
- Your spouse will be liable for the account.
- You are relying on your spouse's income to pay the account.
- You live in a community property state (Alaska, (if spouses agree in writing), Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, or Wisconsin) or you are relying on property located in a community property state to establish your creditworthiness.

- You are relying on alimony, child support, or other maintenance payments from a spouse to repay the creditor. (You are not required to reveal this income if you don't want the creditor to consider it in evaluating your application.) A creditor may ask whether you have to pay alimony, child support, or separate maintenance.

The prohibition against marital status discrimination also means that a creditor must consider the combined incomes of an unmarried couple applying for a joint obligation if it considers the combined income of married coapplicants.

Sexual Orientation Discrimination

No federal law specifically prohibits credit discrimination based on sexual orientation. However, a few states prohibit this type of discrimination.

Race Discrimination

In general, lenders are prohibited from asking a person's race on a credit application or ascertaining it from any means (such as a credit file) other than the personal observation of a loan officer. There is one important exception to this law: A mortgage lender may ask someone to voluntarily disclose his or her race for the sole purpose of monitoring home mortgage applications. Other creditors may ask for this information, although provision of the information is optional, and the creditor can use the

information only to check its own practices for discrimination.

Lenders have been accused of getting around race discrimination prohibitions by redlining—that is, denying credit to residents of predominantly nonwhite neighborhoods.

More recently, credit discrimination laws have been used to challenge what is known as “reverse redlining.” In “reverse redlining,” instead of avoiding certain neighborhoods, creditors target low-income, often nonwhite, neighborhoods to sell loan products with extremely high interest rates and other costly terms.

In recent years, some agencies and nonprofit organizations have analyzed data collected under the Home Mortgage Disclosure Act (HMDA), and discovered that African Americans, Hispanics, and women are more likely to wind up with higher-cost loans. The HMDA data doesn't take into account differences in income, credit scores, or other factors creditors look at to make loans. But when studies took several of those other factors into account, these groups still were more likely to get higher-cost loans than others.

National Origin Discrimination

Discrimination based on national origin is prohibited under the ECOA, the FHA, and most state credit discrimination laws. “National origin” generally refers to an individual's ancestry or ethnicity. A creditor might be discriminating based on national origin by treating people with Latino or Asian surnames differently from people with

European names. This category extends to discrimination against non-English speakers, but it does not necessarily include noncitizens. A creditor is allowed to consider an applicant's residency status in the United States in certain circumstances.

Age Discrimination

The ECOA and many state laws prohibit credit discrimination based on age. This is mostly meant to protect older people (aged 62 or over under the ECOA). Creditors are allowed to consider age in order to give more favorable treatment to an older person (for example, considering an older person's long payment history, which a younger person hasn't had time to build yet). However, age cannot be used to an older person's detriment. For example, a creditor cannot automatically refuse to consider income often associated with the elderly, such as part-time employment or retirement benefits.

Postbankruptcy Discrimination

If you're considering filing for bankruptcy or you've been through bankruptcy, you may be worried that you'll suffer discrimination. Under bankruptcy law, there are two categories of legal protection against this kind of discrimination, depending on whether you are dealing with a private person or a governmental entity.

All federal, state, and local governmental entities are prohibited from denying, revoking,

suspending, or refusing to renew a license, permit, charter, franchise, or other similar grant solely because you filed for bankruptcy or did not pay a debt that was discharged in bankruptcy. Nor may they deny or terminate employment, discriminate in employment, or discriminate in connection with student loans or grants. In interpreting this law, judges have ruled that the government cannot, based solely on your bankruptcy filing:

- deny you a job or fire you
- deny or terminate your public benefits
- deny or evict you from public housing
- deny or refuse to renew your state liquor license
- withhold your college transcript
- deny you a driver's license, or
- deny you a contract, such as a contract for a construction project.

In general, once any government-related debt has been canceled in bankruptcy, all acts against you that arise out of that debt also must end. For example, if a state university has withheld your transcript because you haven't paid back your student loan, once the loan is discharged, you must be given your transcript.

Remember, though, that the law only protects you from government denials that are based solely on your bankruptcy. You could still be denied a government loan, a job, or an apartment, based on reasons apart from the bankruptcy—and that includes a conclusion that your future creditworthiness is poor.

In addition, private employers may not fire you or otherwise discriminate against you solely because you filed for bankruptcy.

(11 U.S.C. § 525(b).) It is unclear, however, whether or not the act prohibits employers from not hiring you because you went through bankruptcy.

Other forms of discrimination in the private sector aren't necessarily illegal. If you seek to rent an apartment and the landlord does a credit check and refuses to rent to you because you filed for bankruptcy, there's not much you can do other than try to show that you'll pay your rent and be a responsible tenant. If a bank refuses to give you a loan because it perceives you as a poor credit risk, you may have little recourse.

If you suffer illegal discrimination because of your bankruptcy, you can sue in state court or in the bankruptcy court. You'll probably need to hire an attorney.

Your Rights to Notice Regarding Credit Decisions

You may be discriminated against in connection with credit you already have or new or additional credit you request. The ECOA and the Fair Credit Reporting Act (FCRA) each require certain notices in connection with a creditor's decision to change, grant, or deny credit. The required notices are intended to expose and prevent discrimination and to provide you with more information so you can determine why a particular decision was made, whether it was a legitimate decision, and check the accuracy of any credit report or other information that the creditor used in making the credit decision.

ECOA Required Credit Notices

The ECOA requires that creditors give notice of credit decisions as follows.

Appraisals. If you apply for credit on a residence, and the creditor does not give you a copy of any appraisal done, you can get a copy of the appraisal by sending a written request to the creditor.

Other credit decisions. The ECOA requires a creditor to tell you within 30 days if it

- approves your credit request
- denies your credit request
- offers a substantially different amount or terms from those you requested
- revokes your existing credit, or
- changes the terms of your existing credit (but not those of most others in the same class of the creditor's accounts).

The creditor must provide you with written notice any time it takes "adverse action" in relation to your credit. An adverse action is when a creditor refuses to raise your credit limit, refuses to grant credit as you requested, terminates your account, or makes an unfavorable change in the terms of your account (unless it changes the terms of all, or substantially all, of its consumer accounts of the same type). The notice must:

- tell you what credit decision was made, and
- include a statement of the specific, principal reasons for the credit decision or your right to make a written request for a statement of the reasons within 60 days and to receive it within 30 days from your request.

You are not entitled to this notice if you are denied additional credit under an existing credit agreement when you are already delinquent or otherwise in default, or if the additional credit requested would put you above your credit limit. But it doesn't hurt to ask for the information anyway.

FCRA Required Notices

The FCRA requires that creditors give notice of credit decisions as follows.

“Adverse Action” Notice. The FCRA requires creditors taking adverse action to give you a notice with this information:

- the nature of its credit decision
- the identity of the consumer reporting agency providing the information upon which it relied in making its decision
- that you can get a free credit report from that consumer reporting agency if you ask for it within 60 days, and
- that you can dispute incorrect or incomplete information in the report.

Beginning July 21, 2011, if a creditor that used your credit report takes an adverse action against you, and if it also used a credit score in making its decision, it must tell you your credit score, too. The creditor must also tell you the range of possible credit scores, the key factors that adversely affected your credit score, the date the score was created, and the name of the entity that provided the score or credit file on which the score was based.

If the creditor relied on information from some other source when making its decision, it must tell you that you have the

right to request, within 60 days, the reasons for the adverse action. If you do make such a request, it must tell you upon what information it relied.

Often, a creditor will combine the ECOA and the FCRA notices into one.

Risk-Based Pricing Notice and Credit

Score Notice. Beginning January 2, 2011, if a creditor charges you a higher annual percentage rate (APR) than it charges others, it has to comply with certain notice obligations. These new FCRA notice requirements kick in if a creditor uses a consumer report in connection with deciding what regular APR to charge for new or existing credit, and offers you a rate less favorable than the rate it offers approximately 40% of other consumers to whom it offered a similar type of credit. The rule doesn't require lenders to tell you that it offered a different type of loan to people with better credit. For example, if the creditor offers you a variable rate home loan, but offers fixed-rate home loans to a substantial number of its customers with better credit histories, it does not have to give you a notice telling you that. It only has to notify you if it offers a substantial number of customers a better rate on a variable rate loan.

The notice requirement has many other exceptions and limitations.

- The creditor does not have to comply with the new notice rules if it gave you credit on the terms you requested.
- If the creditor gives you an “adverse action” notice, it does not have to comply with the new notice rules.
- The creditor only has to compare APR rates within a specific type of credit

(such as student loans, new car loans, or variable rate home loans).

- If the creditor sends a particular credit card offer only to customers with low credit scores, for example, it does not have to tell you what credit card offers it makes to other groups of consumers.
- It only has to compare the regular APRs, not other rates. So, it could make credit card offers with the same regular APR to a group of consumers, but offer some consumers a plan that has a different default rate than the default rate it applies to most consumers who make a late payment, and not have to tell you that.

Barring one of the above exceptions or limitations, if the creditor does offer you an APR less favorable than what it offers to about 40% of other consumers it has to either tell you this (called a risk-based notice), or reveal your credit score and how it compares to others (this is called a credit score notice).

If the creditor chooses to use the risk-based notice, it must provide you with the following information:

- the terms the creditor offers you are based on information from your credit report
- the terms it offers you may be less favorable than the terms it offers to consumers with better credit histories
- the identity of the consumer reporting agency providing the report it used to compare you to others, and
- you have a right to a free copy of your credit report from the reporting agency if you ask for it within 60 days.

If the creditor chooses to use the credit score notice, it must provide you with the following information:

- your current credit score
- the date the credit score was created
- how your credit score compares to those of other consumers who were also scored using the same credit scoring method
- the identity of the consumer reporting agency providing the score, and that you have a right to a free copy of your credit report from each nationwide consumer reporting agency once every 12 months (but not an additional copy in connection with this notice).

Both types of notices must also tell you that you have the right to dispute inaccurate information in your credit report.

If the credit you are requesting does not have an APR, the creditor must tell you if the most important credit term in the contract is different for you than for others. For example, it might have to tell you that the utility service deposit it charges you is higher than what it charges others.

If You Are Denied Credit or Offered Expensive Credit Terms

You should always ask the creditor what it based its decision on, the reasons for its decision on, and how the terms it offered you compare with the terms it gave to other consumers. The “Sample Letter Asking for Basis of Unfavorable Credit Offer or Action,” below, asks for all of this information.

Sample Letter Asking for Basis of Unfavorable Credit Offer or Action

March 15, 20xx

Customer Service
Kaptain Bank Credit Company
600 Kaptain Plaza
Norate, SD 89730

Re: Shawn Smith Account # 7777 42356 8254 9937

Dear Sir or Madam:

I responded to a credit card offer you sent me. The offer was for a card with a credit limit up to \$3,000, and a variable interest rate on purchases as low as 3% over the prime rate. I just received my card. The materials with it say my credit limit is \$300 and the interest rate on purchases is 7% over the prime rate. With the reduced limit, I can barely use the card without going over my credit limit, and the interest rate is more than double the lowest interest rate you offered.

Please provide me the following information:

- the identity and contact information for any credit reporting agency from which you received information you relied on in making your decision on the credit terms you gave me
- whether you received any information from any other source on which you relied in making the decision
- what are the most favorable credit limits and interest rates you set for any substantial number of your other customers, and
- a statement of the specific, principal reasons for your decision to set the low credit limit and high interest rate on my account.

Please provide your response within 30 days from the date of this letter.

Sincerely,

Shawn Smith

Shawn Smith

If you accept credit on terms worse than you initially asked for, the creditor may not be required to give you any notice. So, if possible, before you accept the offer or use the credit, ask for a written statement explaining the reasons the creditor did not give you the requested credit terms. For example, if you receive a credit card with terms worse than those offered in an advertisement or worse than what you requested, send a letter (like the sample letter above) and wait for an answer before you use the card or accept the terms. Even if you already accepted those terms, it's still a good idea to send a written request to the creditor asking why you did not get the terms requested.

Even if you did not request credit, if the creditor reviewed your account on its own, based its decision in part on any credit report, and took an action adverse to you (such as reducing your credit limit or raising the interest), the creditor must also provide you notice about the credit reporting agency where it got the information and your rights to get a free report or dispute the information. If a creditor changes the terms of your credit account, even if you don't get a notice about your rights, it doesn't hurt to write to the creditor and ask if it relied on any credit reporting agency and to explain the specific reasons it changed your credit terms.

Use the notice from the creditor to get a free copy of your credit report and look for

a problem that caused the creditor to offer you the less favorable terms. If you can't see a problem and want to pursue the matter, ask the creditor to explain what items in your credit report caused you to receive the less favorable terms, how your credit report differs from customers who received significantly more favorable terms, and what those terms are.

Lawsuits Based on Credit Discrimination or Notice Violations

If you are harmed by the creditor's violation of the ECOA (whether due to discrimination or a notice violation), you can sue the creditor. If you are successful, the court may award regular damages, up to \$10,000 in punitive damages, and attorneys' fees. If the credit discrimination relates to housing, you can bring a lawsuit based on violations of the Fair Housing Act which also provides for damages and attorneys' fees if you win. Likewise a successful lawsuit based on violations of the FCRA may also result in damages and attorneys' fees. Because the defendant must pay your attorneys' fees if you win these types of lawsuits, attorneys specializing in credit discrimination lawsuits may be willing to take your case, without charging you fees up front, if they think you have a good chance of winning.



Help Beyond This Book

Looking Up the Law	404
State and Federal Laws.....	404
Court Decisions.....	406
Use Background Resources.....	408
Online Legal Research.....	408
Lawyers.....	411
What Lawyers Can Do for You	411
How to Find a Lawyer.....	412
What to Look for in a Lawyer.....	413
How Much Lawyers Charge	414
Debt and Credit Counseling Agencies.....	415
Consumer Credit Counseling Service	416
Shopping for a Credit or Debt Counseling Agency	416
Finding Credit and Debt Counseling Agencies Through the U.S. Trustee	418

“It takes nearly as much ability to know how to profit by good advice as to know how to act for one’s self.”

—François de La Rochefoucauld,
French writer and moralist, 1613–1680

This book gives you strategies for coping with your debts. But the suggestions outlined here may not be enough—bill collectors might continue to harass you even after you tell them to stop, you might want help in negotiating with your creditors, you might be sued, you may want to sue a creditor, or you may decide to file for bankruptcy.

Here are some ways to get more information or advice. Keep in mind that by reading this book, you’ve shown that you’re willing to take responsibility for doing research and making informed decisions about your legal and financial affairs. If you decide to get help from others, shop around until you find an adviser who values your competence and intelligence and recognizes your right to make your own decisions.

Looking Up the Law

Often, you can handle a legal problem yourself if you’re willing to do some research. The trick is to know where to turn for the type of information you need. Both the Internet and law libraries are full of valuable information, such as state and federal statutes. For example, you could read the Fair Debt Collection Practices Act, find out that harassment by collection agencies is

illegal, and then read court cases that have decided what types of behavior constitute harassment by a bill collector.

If you decide to take the library route, you must first find a law library that’s open to the public. You might find such a library in your county courthouse or at your state capitol. Publicly funded law schools generally permit the public to use their libraries, and some private law schools grant access to their libraries—sometimes for a modest fee.

Don’t overlook the reference department of the public library if you’re in a large city. Many large public libraries have a decent legal research collection. Also, ask about using the law library in your own lawyer’s office. Some lawyers will share their books with their clients.

The Internet is also a tremendous legal research tool. (See “Online Legal Research,” below.)



RESOURCE

Want detailed advice on legal

research? We don’t have space here to show you how to do your own legal research in anything approaching a comprehensive fashion. To go further, get a copy of [*Legal Research: How to Find & Understand the Law*](#), by Stephen Elias and Susan Levinkind (Nolo). This nontechnical book gives easy-to-use, step-by-step instructions on how to find legal information.

State and Federal Laws

Debt collection and credit reporting are governed by state and federal law. In the

past, generally, when laws overlapped, the stricter laws applied. In practical terms, this usually meant that the laws that gave debtors the most protection prevailed over less-protective laws. Beginning in the 1980s and afterwards, Congress and the president have made more and more federal laws “preempt” state consumer protection laws, or courts have decided that Congress intended federal laws to “preempt” state laws when it wasn’t clear from the law itself. “Preemption” means federal law trumps state laws. Often state laws are more protective of consumers than federal laws, so the trend toward preemption, in many cases, has decreased consumer protection. However, the 2010 Dodd/Frank Wall Street Reform and Consumer Protection Act reverses the trend and limits the circumstances in which federal banking and consumer protection laws preempt state laws that are more protective of consumers. Which laws or parts of laws are preempted is in flux and difficult to know for sure. Unless you know for certain that a stronger state law has been preempted, it is probably wise to try to rely on both the federal law and your state law.

State Statutes

We refer to many of the state laws affecting debtors throughout this book and include citations so that you can do additional research. State laws or codes are collected in volumes and are available in many public libraries and in most law libraries. Depending on the state, statutes may be organized by subject matter or by title number (“chapter”), with each title covering

a particular subject, or simply numbered, without regard to subject matter.

“Annotated codes” contain not only all the text of the laws (as do the regular codes) but also a brief summary of some of the court decisions interpreting each law and often references to treatises and articles that discuss the law. Annotated codes have comprehensive indexes by topic and are kept up to date with paperback supplements (“pocket parts”) stuck in a pocket inside the back cover of each volume.



TIP

Try your state consumer protection

agency. Your state consumer protection agency or attorney general’s office may provide publications at little or no cost explaining state laws on debt, credit, and general consumer matters. You can find an excellent list of state consumer protection agencies at Consumer Action’s website, www.consumeraction.gov/state.shtml.

Federal Statutes and Regulations

Congress has enacted laws, and federal agencies such as the Federal Trade Commission have adopted regulations, covering most of the topics in this book. We include citations for many of the federal laws affecting debtors throughout this book. The U.S. Code is the starting place for research on most federal laws. It consists of 50 separate numbered titles. Each title covers a specific subject matter. For example, Title 15 contains the Consumer Credit Act; Title 11 contains the Bankruptcy Act. Two versions of the U.S. Code are published in annotated

form: the United States Code Annotated and the United States Code Service. Most law libraries carry both.

Most federal regulations are published in the Code of Federal Regulations (C.F.R.), organized by subject into 50 separate titles.

Court Decisions

Often the answer to a legal question cannot be found in a statute. This happens when:

- court cases and opinions have applied the law to the specific facts in a particular case, explaining how the statute works in practice and how it is to be interpreted if there could be more than one way to interpret part of the law, or
- no specific law applies or the law has not been applied to facts like the ones in the case, so courts have applied general legal principles based on the common law, which was developed by judges in England, America, and elsewhere before laws were organized into extensive codes of law.

Court Decisions That Explain Statutes

Statutes and ordinances do not explain themselves. For example, the Fair Debt Collection Practices Act prohibits collection agencies from using the telephone to harass you and gives some examples, but doesn't define harassment. Chances are, however, that others before you have had the same questions, and they may have come up in the context of a lawsuit. If a judge interpreted the statute and wrote an opinion

on the matter, that written opinion, once published, will become part of “the law” as much as the statute itself. If a higher court (an appellate court) has also examined the question, then its opinion will have more influence than trial courts. How much influence depends. If one appellate court in a state has decided the question, for example, trial courts in that state, but not in other states, may be required to follow that opinion in their cases. If a federal trial court has decided a question, a state appellate court may not be required to follow that opinion. When there is no guidance for a particular judge (no earlier cases in his or her state or federal circuit that concern the same issue), the judge can also see what other states' and circuits' judges have done, and base decisions on them, if he or she thinks the other court's opinion is well thought out.

To find out if there are written court decisions that interpret a particular statute or ordinance, look in an “annotated code.” At the end of each section, you'll find summaries of cases that have interpreted it. If you find a case that seems to answer your question, it's crucial to make sure that the decision you're reading is still “good law”—that a more recent opinion from a higher court has not reached a different conclusion. To make sure that you are relying on the latest and highest judicial pronouncement, you must use the library research tool known as *Shepard's*, which sends you to later cases that have said something about the case you found. Using online legal research tools (see “Using Westlaw and Lexis,” below)

make the case-checking process through *Shepard's* much less cumbersome than using the *Shepard's* books. *Legal Research: How to Find & Understand the Law*, by Stephen Elias and Susan Levinkind (Nolo), has a good, easy-to-follow explanation of how to use the *Shepard's* system to expand and update your research.

Court Decisions That Make Law

Many laws that govern the way creditors must conduct their business do not have an initial starting point in a statute. These laws are entirely court made and are known as “common” law. For example, in many states, creditors collecting their own debts are not allowed to harass debtors. (Remember, the federal Fair Debt Collection Practices Act applies only to collection agencies.)

Researching common law is more difficult than statutory law. With a little perseverance, however, you can certainly find your way to the cases that have developed and explained the legal concept you wish to understand. A good beginning is to ask the librarian for any “practice guides” in the field of debtor-creditor relations. These are outlines of the law, written for lawyers, that are kept up to date and are designed to get you quickly to key information. Because they are so popular and easy to use, they are usually kept behind the reference counter and cannot be checked out. More sophisticated research techniques, such as using a set of books called *Words and Phrases* (which sends you to cases based on key words), are explained in the book *Legal Research*, mentioned above.

How to Read a Citation to a Case, Statute, or Rule

If you find a citation to a law (statute), regulation, or case that looks important, you should read the statute, regulation, or opinion. For cases, you'll need the title of the case and its citation, which is like an address for the set of books, volume, and page where the case can be found. Ask the law librarian for help.

Although it may look about as decipherable as hieroglyphics, once understood, a citation gives lots of useful information in a small space. A citation to a statute or regulation tells you the volume of the legal code, the abbreviation for the legal code, and the numbered section where the statute or regulation is found. So, for example, 16 C.F.R. § 310.4(a)(5) tells you the regulation is found in title 16 of the Code of Federal Regulations at the paragraph numbered 310.4(a)(5). Likewise, a citation to 15 U.S.C. § 1601 sends you to Title 15 of the United States Code, Section 1601, which is the first section of the Truth-in-Lending Act. (You will notice that we sometimes refer to statute citations in the text of this book.)

A case citation tells you the names of the people or companies involved, the volume of the reporter (series of books) in which the case is published, the page number on which it begins, and the year in which the case was decided. So, for example, *Nielsen v. Dickerson*, 307 F.3d 623 (7th Cir. 2002) tells you one plaintiff was Nielsen, one defendant was Dickerson, the case is found in Volume 307 of the 3rd set of the Federal Reporter set of federal court cases, starting at page 623. It

also tells you the year the case was decided and which court decided it—the 7th Circuit Court of Appeals.

Use Background Resources

If you want to research a legal question but don't know where to begin, several resources are available on consumers' and debtors' rights issues. The best all-around sources are the publications of the National Consumer Law Center (www.consumerlaw.org).

Their very thorough and regularly updated volumes include the following titles:

- *Consumer Bankruptcy Law and Practice*
- *Consumer Class Actions*
- *Student Loan Law*
- *Consumer Arbitration Agreements*
- *Consumer Banking and Payments Law*
- *Credit Discrimination*
- *Fair Credit Reporting*
- *Fair Debt Collection*
- *Foreclosures*
- *Consumer Warranty Law*
- *Repossessions*
- *Truth in Lending*
- *Unfair and Deceptive Acts and Practices*
- *The Cost of Credit*
- *Automobile Fraud*, and
- *Access to Utility Service*.

Unfortunately, not all law libraries have these volumes. You may need to call several law and public libraries until you find a library that does carry them. For more information, call the National Consumer Law Center (617-542-8010), or contact them at consumerlaw@nclc.org.

Online Legal Research

You can accomplish a good deal of legal research using the Internet. But you can't do it all—not every court decision is available online. Furthermore, unless you know what you are looking for—the case name and citation or the code section—you may have difficulty finding it.

Finding Debt, Credit, and Consumer Information Online

Often, the best place to start your quest is with websites that contain information about debt, credit, finance, consumer protection, and bankruptcy. Unfortunately, websites on these topics are not always reliable sources of good information. Some are published by companies trying to sell things like debt settlement and loan consolidation services, or charge you for credit reports that you can get for free. Others are by attorneys who may not be specialists in the field. And often the information is not regularly updated. However, here are a few, reliable websites to check:

- www.nolo.com

Nolo's site includes a vast amount of legal information for consumers. Check out the [Bankruptcy](#), [Foreclosure](#), and [Personal Finance and Retirement](#) areas for free information on credit repair, debt, bankruptcy, foreclosure, and more. You'll find articles, FAQs, online [calculators](#), checklists, and [blogs](#).

- www.nclc.org

This is the website of the National Consumer Law Center.

- **www.bbb.org**

The Better Business Bureau allows you to file consumer complaints online, to check the reputation of many businesses before you do business with them, and to get dispute resolution services for a variety of products and services. Remember, however, that a business with no complaints still may be untrustworthy. Businesses can change names or defraud a lot of people before the complaints catch up to it.

- **www.pueblo.gsa.gov**

The Federal Citizen Information Center provides the latest in consumer news as well as many publications of interest to consumers, including the *Consumer Information Catalog* and a free consumer handbook.

- **www.fdic.gov, www.ftc.gov, www.federalreserve.gov**

The Federal Deposit Insurance Corporation, Federal Trade Commission, and Federal Reserve Board offer extensive consumer protection rules, guides, and publications.

- **www.irs.gov**

The Internal Revenue Service provides tax information, forms, and publications. Another feature lets you post your individual question to the IRS; you'll get an email response in a few days. (The information is fairly generic but will help you get started researching a question.)

Finding Statutes and Regulations Online

You can find federal statutes, the entire Code of Federal Regulations, and most state

statutes by visiting Nolo's website at www.nolo.com (click on Legal Research in the Free Legal Information section). The Government Printing Office (www.gpoaccess.gov/index.html) offers an excellent website that contains the entire Code of Federal Regulations, the Federal Register (in which notices of proposed or recently finalized regulations, and updated dollar amounts for fees that are based on an index, among other items, are contained), bills pending before Congress, Congressional reports on pending or passed bills, and the U.S. Code, among other legal resources.

There is often a delay between the time a statute is passed and the time it is included in the overall compilation of laws. Almost every state maintains its own website for pending and recently enacted legislation. These sites contain not only the most current version of a bill, but also its history. To find your state's website, see "Finding Court and Government Agency Websites," below. Finally, the United States Library of Congress maintains a website at <http://thomas.loc.gov> that contains all pending federal bills and a link to the U.S. Code.



RESOURCE

Information for Californians. You can get the text of appellate court decisions at www.courtinfo.ca.gov and the text of all California statutes and pending legislation at www.leginfo.ca.gov. For a catalog of University of California libraries, the California State Library, and law school libraries, as well as libraries worldwide, check out <http://melvyl.cdlib.org>. It can locate libraries near you that have the book you are searching for.

Finding Court and Government Agency Websites

Many courts and government agencies have websites that provide statutes and case law, plus other useful information, such as forms, answers to frequently asked questions, and downloadable pamphlets on various legal topics. To find your state's website, open your browser and type in `www.state.<your state's postal code>.gov`. (Your state's postal code is the two-letter abbreviation you use for mailing addresses. For example, for New York, you would type `www.state.ny.gov`.) If your state has a more creative Web address, you can search for "State Government" at `www.usa.gov`.

Once you find your state's website, look for links to the state legislature or to state statutes, state courts, and state court decisions. Also, look for websites of university libraries and your state library.

Local, state, and federal court websites are also available at the National Center for State Courts' website, www.ncsconline.org. The federal judiciary's website is www.uscourts.gov. And, of course, [Nolo's website](http://www.nolo.com), www.nolo.com, provides all kinds of useful links.

Finding Cases on the Web

You may know the name of a case or its citation, and just need to locate it. A number of websites are helpful if you want to search by case name or citation.

State cases. If the case is recent (within the last few years), you may be able to find it free on the Internet. A good place to start is Cornell Law School at www4.law.cornell.edu or LexisNexis at www.lexisone.com. Also, many state websites now publish recent cases. See "Finding Court and Government Agency Websites," above, for information on how to find your state's website.

If the case is older, you can still find it on the Internet, but you will probably have to pay a private company for access to its database. VersusLaw at www.versuslaw.com maintains an excellent library of older state court cases. You can do unlimited research on VersusLaw for a small monthly fee. You can also get state cases online through Google Scholar and the Lexis and Westlaw databases.

U.S. Supreme Court cases. [Nolo's Legal Research Center](http://www.nolo.com), available at www.nolo.com, provides U.S. Supreme Court cases decided within the last hundred years.

Other federal cases. FindLaw, at www.findlaw.com, contains cases decided by the federal Circuit Courts of Appeal within the last ten or so years, some bankruptcy opinions, and very recent tax court cases. The Cornell Law School Legal Information Institute at www4.law.cornell.edu provides access to all federal appellate court cases, some district court cases, and some bankruptcy opinions. VersusLaw (explained above) also has some U.S. District Court cases, and some bankruptcy opinions. If you can't find the case you're looking for on one of these websites, your best bet is to use

Google Scholar, Westlaw, or Lexis, or hit the books at the library.

Finding cases by topic. Often, you want to find cases that discuss how a particular law has been interpreted or applied to facts. In this situation, you must search by subject, not by case name or citation. You can use most of the online legal research sites mentioned to search cases by topic. The easiest to use are Lexis and Westlaw (see “Using Westlaw and Lexis,” below), but they are expensive. A recent addition to legal research, Google Scholar, which is being beta tested at <http://scholar.google.com>, has a free search engine for cases. Click on “legal opinions and journals,” then enter your search terms.

Using Westlaw and Lexis

Lexis and Westlaw are online legal databases that contain almost all reported cases from state and federal courts, all federal statutes, state statutes, federal regulations, law review articles, commonly used treatises, and practice manuals.

Although Westlaw and Lexis subscriptions are pricey, both offer some free and some fee-based services to nonsubscribers that are both helpful and reasonably priced (between \$9 and \$10 per document). To find out more about these services, visit www.westlaw.com or www.lexis.com.

Lexis does offer a free online service that gives access to state cases and higher-level federal cases from the past ten years, at www.lexisone.com.

Lawyers

As a general rule, you should get an attorney involved in your situation if the dispute is of high enough value to justify the attorney’s fees. For example, if you owe a creditor \$1,200, but the goods were defective and you feel you shouldn’t have to pay, and an attorney will cost \$800, you’re probably better off handling the matter yourself, even though this increases the risk that the creditor will win. If, however, you owe \$10,000 and the attorney will cost \$1,000, hiring the attorney may make sense. You also may want to consult an attorney if the stakes are high—for example, you are facing foreclosure.

If you believe a creditor has violated the law or if you think you were treated unfairly, but don’t know if the conduct violated the law, you may want to have an initial consultation with a lawyer. Some consumer protection laws provide attorneys’ fees if you win. Also, if you were victimized by a common unlawful practice, the attorney may be able to handle the case as a class action, even if each individual’s stake in the case is relatively small. Depending on the law and circumstances, an attorney may take your case on contingency, so all you would have to pay before the case is over are costs. Even costs can mount up, so before you agree, find out the total cost.

What Lawyers Can Do for You

There are four basic ways a lawyer can help you.

Consultation and advice. A lawyer can analyze your situation and advise you on

your best plan of action. Ideally, the lawyer will describe all your alternatives so you can make your own choices. Get this kind of assistance early because you may lose options if you wait.

Negotiation. A lawyer can help you negotiate with your creditors, particularly if the lawyer has experience settling disputes through negotiation. If the creditor has an attorney, that attorney may be more apt to settle with your lawyer than with you. And an attorney's letterhead itself lets a creditor know you are serious about settling.

Representation. If you are sued or want to sue, especially if you have a good defense or a claim against the creditor, you may want to hire a lawyer to represent you. You also may consider hiring a lawyer to assist you if you decide to file for bankruptcy. While many bankruptcies are routine and debtors can often represent themselves when armed with a good self-help book, in some cases, an experienced bankruptcy attorney may be able to point out rights and advantages that you might not figure out on your own.

Unbundled services. Some lawyers today “unbundle” their services. This means that they will assist you with a certain task (such as preparing a response to a lawsuit filed against you) or a certain portion of a lawsuit (such as discovery) for a fee that is less than if you hired them to handle the entire lawsuit.

How to Find a Lawyer

Here are several ways to find a lawyer.

Legal Aid. Legal Aid offices offer legal assistance in many areas, especially for people with debt problems. To qualify for

Legal Aid, you must be low income. Usually that means your household income cannot exceed 125% of the federal poverty level, about \$27,500 for a family of four, although some offices have different guidelines. To find a Legal Aid office, go to the federal Legal Services Corporation's website at www.lsc.gov. You can look in your local phone book, too, but be careful. Some unscrupulous nonlawyers have been known to pose as legal aid organizations, even using “legal aid” in their names. These groups may take your money and not do anything or may take actions that you haven't authorized.

Legal clinics. Many law schools sponsor legal clinics and provide free legal advice to consumers. Some legal clinics have the same income requirements as Legal Aid offices—others offer free services to low- to moderate-income people.

Personal referrals. If you know someone who was pleased with the services of a lawyer, call that lawyer first. If that lawyer doesn't handle debtor's rights matters or can't take your case, ask for a recommendation to someone else. Be careful, however, when selecting a lawyer from a personal referral. Just because a lawyer performed satisfactorily in one situation doesn't guarantee the same performance in your case.

Group legal plans. Some unions, employers, and consumer action organizations offer group plans to their members or employees, who can obtain comprehensive legal assistance free or for low rates. If you're a member of such a plan, check with it first for a lawyer, but be wary of so-called group legal plans that solicit you, if they

are not affiliated with a group such as your union or with your employment. Some are not legitimate. They charge high fees and may provide unlawful legal assistance by unskilled nonattorneys.

Prepaid legal insurance. Prepaid legal insurance plans offer some services for a low monthly fee and charge more for additional or different work. These too, can be used for running scams. Participating lawyers may use the plan as a way to get clients who are attracted by the low-cost, basic services, and then sell them more expensive services. If the lawyer recommends an expensive course of action, get a second opinion before you agree.

But if a plan offers extensive free advice, or you can use the lawyer to write several letters to your hounding creditors, the consultation or service you receive may be worth the cost of membership.

There's no guarantee that the lawyers available through these plans are of the best caliber. Check out the plan carefully before signing up. Ask about the plan's complaint system, whether you get to choose your lawyer, and whether or not the lawyer will represent you in court.

Consumer organizations. Many national or local consumer organizations can recommend an attorney who handles debtors' rights cases. One place to start is the National Association of Consumer Advocates (www.naca.net). In some large urban areas, consumer advocates publish guides of consumer-oriented legal organizations and lawyers. Check the library to see if it has such a guide.

Lawyer referral panels. Most county bar associations will refer you to attorneys who practice in your area and who have at least some knowledge of the subject you need help with. But bar associations don't always provide meaningful screening for the attorneys listed, which means those who participate may not be the most experienced or competent.

State Bar organizations. State Bar organizations are often quasi-government bodies that are responsible for policing lawyers' conduct. Some of them establish standards for attorneys to become specialists in particular fields and may have lists on their websites of attorneys in your area who are specialists in particular areas.

Nolo's Lawyer Directory. This online directory provides detailed profiles of attorney advertisers, written by the lawyers themselves, including information about the lawyer's education, experience, practice areas, and fee schedule. Go to www.lawyers.nolo.com or www.nolo.com.

What to Look for in a Lawyer

Here are three suggestions on how to make sure you have the best possible working relationship.

First, fight any urge to surrender your will and be intimidated by a lawyer. You should be the one who decides what you feel comfortable doing about your legal and financial affairs. Keep in mind that you're hiring the lawyer to perform a service for you; shop around if the price or personality isn't right.

Second, you must be as comfortable as possible with any lawyer you hire. When making an appointment, ask to talk directly to the lawyer. If you can't, this may give you a hint about the lawyer's accessibility.

If you do talk to the lawyer, ask some specific questions. Do you get clear, concise answers? If not, try someone else. If the lawyer says little except "I can take care of it"—with a substantial fee—watch out. Don't be a passive client or hire a lawyer who wants you to be one. If the lawyer admits to not knowing an answer, that isn't necessarily bad. In most cases, the lawyer must do some research.

Also, pay attention to how the lawyer responds to your having considerable information. If you've read this book, you're already better informed about debtors' rights laws than most clients are. Some lawyers are threatened when the client knows too much—and you'll want to avoid them.

When you've narrowed your search to several lawyers, check their disciplinary history on your state bar's website. This website also may say where the lawyers went to school, how long they've been in practice, and whether they're certified as specialists in any areas of practice.

Once you find a lawyer you like, make an appointment to discuss your situation fully. Your goal at the initial conference is to find out what the lawyer recommends and how much it will cost. Go home and think about the lawyer's suggestions. If they don't make sense or if you have other reservations, call someone else.

Third, keep in mind that the lawyer works for you. Once you hire a lawyer, you have

the absolute right to switch to another—or to fire the lawyer and handle the matter yourself—at any time, for any reason.

Watch Out for Nonattorneys Offering Legal-like Services

Some companies pose as experts in some area of law, like bankruptcies or landlord-tenant, and charge high fees to provide services that seem like legal services, even though the services are usually provided by unskilled sales people, not attorneys. They will likely claim that they are cheaper or better than attorneys. Or they may hire an attorney, supposedly to represent clients if needed, but the attorney's loyalty is to helping the company sell you expensive services, not to working for your best interests. Companies like this are illegal in most states. The "help" they provide may make your situation worse, besides being as expensive as a real attorney. If you may need an attorney, do the looking and selecting yourself. Don't be taken in by one of these companies.

How Much Lawyers Charge

If all you want is a consultation with an attorney to find out where you stand and what options you have, be sure to find out the hourly fee ahead of time. Some charge as little as \$100 an hour, while others charge \$500 or more per hour.

A letter doesn't take that long to write, however, and as long as you are clear about

what you want the lawyer to do and not do, you can keep the bill low. If you want the lawyer to do some negotiating, the fee could add up.

If you're sued by a creditor and hire a lawyer to represent you, the lawyer's fee will probably add up fast. A few lawyers might represent you for a flat fee, for example, \$500, but most charge by the hour. If you have a claim against a creditor and might win damages—for example, if a bill collector posted your name throughout the town as a “deadbeat”—the lawyer might take your case on a contingency fee basis. That means the lawyer gets paid only if you win your case. If you don't win, the lawyer doesn't get paid a cent, but will probably expect you to reimburse costs. Most lawyers tend to take only those cases they think they have a good chance of winning on contingency.

Attorneys fees paid to file consumer bankruptcies have gone up due to the additional work required to comply with the 2005 revisions to bankruptcy law. A small survey by the American Bankruptcy Institute showed that half of consumers filing Chapter 7 bankruptcies paid more than \$1,400 for all costs, including attorneys' fees; and about half of those filing a Chapter 13 bankruptcy paid more than \$4,000. Many bankruptcy attorneys let you pay in installments. Also, the attorney must report the fee to the bankruptcy court for approval. The court can make the attorney justify the fee if it's high. This rarely happens, however, because attorneys know what local bankruptcy judges will allow and set their fees accordingly.

One final word: No matter why you hire a lawyer, and for whatever fee, be sure the

lawyer puts the fee arrangement in a written contract for both you and the lawyer to sign. If the lawyer doesn't mention a written fee agreement, ask about one. You don't want your lawyer's fee to become another debt you can't or won't pay.

Debt and Credit Counseling Agencies

Traditional credit and debt counseling agencies are organizations funded primarily by major creditors, such as department stores, credit card companies, and banks, who can work with you to help you repay your debts and improve your financial picture. Most are nonprofit companies.

To use a credit or debt counseling agency to help you pay your debts, you must have some disposable income. A counselor contacts your creditors to let them know that you've sought assistance and need more time to pay. Based on your income and debts, the counselor, with your creditors, decides on how much you will pay to your creditors each month. If you agree to the plan, you then make one payment each month to the counseling agency, which in turn pays your creditors. The agency asks the creditors to return a small percentage of the money to fund its work. This arrangement is generally referred to as a debt management program. It generally takes three to five years to repay debts through a debt management program.

Some creditors will make concessions to help you when you're on a debt management program. But few creditors will reduce your accumulated debt, such as waiving a portion

of the accumulated interest to help you repay the principal. More likely, you'll get late fees dropped, interest rate reductions, and the opportunity to reinstate your credit if you successfully complete a debt management program.

Participating in a credit or debt counseling agency's debt management program is a little bit like filing for Chapter 13 bankruptcy. (See Chapter 15.) Working with a credit or debt counseling agency has one advantage: No bankruptcy will appear on your credit record.

But a debt management program also has two disadvantages when compared to Chapter 13 bankruptcy. First, if you miss a payment, Chapter 13 protects you from creditors who would otherwise start collection actions. A debt management program has no such protection, and any creditor can pull the plug on your plan. Also, a debt management program plan usually requires that your debts other than late fees be paid in full (with no interest or at a reduced rate). In Chapter 13 bankruptcy, the amount you have to pay depends on your disposable income and the value of your nonexempt property; you may end up paying back only a small percentage of your unsecured debt.

Consumer Credit Counseling Service

Consumer Credit Counseling Service (CCCS) is the oldest credit or debt counseling agency in the country. Actually, CCCS isn't one agency. CCCS is the primary operating name of many credit and debt counseling agencies affiliated with the National Foundation for Credit Counseling (NFCC). CCCS may

charge you a start-up fee (around \$25) and a small monthly fee (an average under \$50) for setting up a repayment plan. CCCS also helps people make monthly budgets for a small fee or sometimes free. If you can't afford the fee, CCCS will waive it. In most CCCS offices, the primary service offered is a debt management program. Some offices have additional services, such as helping you save money toward buying a house, prebankruptcy counseling, or reviewing your credit report.

CCCS has more than 1,100 offices, located in every state. Look in the phone book under "Credit and Debt Counseling Services" to find the one nearest you, or contact the main office at 801 Roeder Road, Suite 900, Silver Spring, MD 20910, 800-388-2227 (voice), or at www.nfcc.org.

Shopping for a Credit or Debt Counseling Agency

The combination of high consumer debt and easy access to information (via the Internet) has led to an explosion in advertising by new credit and debt counseling companies. Some provide limited services, such as budgeting and debt repayment, while others offer a range of services, from debt counseling to financial planning and education. Shop carefully. Some of these agencies were established primarily to sell you products and services and don't provide good-quality counseling.

Many of these newer credit counseling companies claim to be nonprofits, but these claims may not be accurate. The company

must meet IRS restrictions to be considered a nonprofit credit counseling agency. In addition, a nonprofit credit counseling company

- cannot solicit contributions from you while counseling you or providing any other services to you
- cannot refuse to provide credit counseling services to you because you can't pay, you aren't eligible for the debt management plan the company offers, or you choose not to enroll in a debt management plan
- can only collect reasonable charges for its services (including a debt management plan)
- must allow a waiver of fees if you can't pay for the services, and
- unless state law allows it, cannot charge you a percentage of your debt, your plan payments, or the projected savings to you from a debt management plan.

The IRS has revoked the nonprofit status of many so-called nonprofit credit counseling companies. To find out whether a credit counseling company is really a nonprofit, go to www.irs.gov/charities, and click on "Search for Charities." If the company is listed there, it's a nonprofit.

When choosing a credit or debt counseling agency, look for a company that is truly a nonprofit. Do not pay "voluntary contributions" or large up-front fees. At a minimum, always ask about all fees and get a quote in writing before agreeing to give your business to a particular counselor. And review "Checklist for Choosing a Credit or Debt Counseling Agency," below. Also see

Chapter 6, "Avoid 'Easy Solutions' to Debt Problems," for cautions about companies that offer similar sounding services, like "debt settlement" or "debt pooling."

Some experts caution against using even the legitimate nonprofit credit and debt counseling companies. Critics point out that these agencies get most of their funding from creditors. (Some offices also receive grants from private agencies such as the United Way, and federal agencies, including the Department of Housing and Urban Development.) These critics claim that counselors cannot be objective in counseling debtors about the advantages or disadvantages of filing for bankruptcy because they know the agency won't receive funds from its supporters. Critics also say that agencies tend to focus on unsecured creditors (who pay the agencies' bills) and neglect secured creditors.

In response to these and other consumer concerns, in 1997, the NFCC, now called the National Foundation for Credit Counseling, with which most legitimate credit counseling agencies are affiliated, reached an agreement with the Federal Trade Commission to disclose the following to consumers:

- that creditors fund a large portion of the cost of their operations
- that the agency balances the ability of the debtor to make payments with the requirements of the creditors that fund the office, and
- a reliable estimate of how long it will take a debtor to repay his or her debts under a debt management program.

Finding Credit and Debt Counseling Agencies Through the U.S. Trustee

With a few exceptions, all bankruptcy filers are now required to get credit and debt management counseling. Filers must get this counseling from a nonprofit agency that meets a number of requirements and has been approved by the Office of the U.S. Trustee. If you decide to get help with debt management, you would do well to choose one of these agencies—the U.S. Trustee’s office oversees their operation, which gives you some protection against fraudulent practices. You can find a list of approved agencies at the U.S. Trustee’s website, at www.usdoj.gov/ust.

Before you sign up with any agency, see below for a “Checklist for Choosing a Credit or Debt Counseling Agency.” Ask the agency if there are people who are currently in the debt management program and who have finished the program who

are willing to speak to you regarding their experiences with it. Finally, make sure you feel comfortable with the agency. You might be in this program for years, so make sure you feel comfortable with the people you’ll be dealing with. Look for friendly, courteous staff who are willing to answer your questions.



CAUTION

Make sure your bills get paid. If you sign up for a debt management plan, keep paying your bills directly until you know that your creditors have approved the plan. Make sure the agency’s schedule will allow it to pay your debts before they are due each month. Check your statements or call each of your creditors the first couple of months to make sure the agency paid them on time and that the statements reflect any reductions in interest, fees, or amounts owed that are to be included in the plan.

Checklist for Choosing a Credit or Debt Counseling Agency

Consumer prosecutors, the FTC, the IRS, and such nonprofit consumer protection organizations as the National Consumer Law Center, offer a variety of tips for choosing a credit counseling or debt management company. Here are a few key tips:

- Check first for companies affiliated with the National Foundation for Credit Counseling (www.nfcc.org) or listed on the U.S. Trustee's list (www.usdoj.gov-ust).
- Then, check with the Better Business Bureau where the company is located, the FTC, and the state agency that regulates this type of business (could be the Attorney General's office, the Corporations Department or another state agency) to find out whether complaints have been made against an agency you're considering. Avoid companies with many complaints at the BBB or ones the FTC or an attorney general or other regulatory agency has sued. But, if there are few or no complaints, don't assume the company is fine. Sometimes companies change names so the complaints don't show up under their name. And because many people don't complain, many other people can be victimized before a lot of complaints show up or companies are prosecuted.
- If the company claims to be nonprofit, check with the IRS to see if it really is (www.irs.gov/charities, then click on "Search for Charities").
- Consider an agency located in your community so you can visit the agency in person before signing up.
- Look for a variety of services. Find an agency that offers a range of counseling options, not just enrollment in a debt management plan.
- Ask about *all* costs. Fees can vary a lot among agencies. Find out what you'll have to pay to set up your account, any monthly fees, any percentages taken based on your debt, the reduction in your debt or anything else. Ask whether they have a sliding scale. Get a quote in writing.
- Get a copy of all documents you are asked to sign and take time at home to read them before you sign and return them.
- Make sure your information will remain private. Find out whether the agency sells or distributes information. Get that in writing.
- Ask how employees are compensated and get that in writing. If employees are paid more for signing up customers for a debt management plan, for example, considering taking your business elsewhere.
- Ask how credit counseling will affect your credit report or score. Some creditors will report your participation in a debt management plan to the credit reporting agencies. Ask the agency how your credit

Checklist for Choosing a Credit or Debt Counseling Agency (cont'd)

report and score will be affected if you decide to get counseling or management services, then compare that with the information about credit reports and scores in Chapter 17 to see whether the agency line seems correct.

- To protect yourself from embezzlement, find out who handles the money you pay, and how. The company should have money you pay toward creditors separated from money it receives for its services and separately accounted for so your money is available to pay on your accounts. Ideally, the money should be kept in a trust account. That means the company cannot use the money for anything other than to make your payments to creditors. Also, if the money is placed in a bank account, ask for written confirmation that each customer's money is separately FDIC insured. (If it is not, there may not be enough to cover all the money the

company receives from customers if the bank fails.) Ask how much insurance the company has to protect against embezzlement by its employees. Ask for a written proof of coverage (the agency can get that from the insurance company and provide you a copy).

- Ask how many companies are involved and what they do. To avoid limits on nonprofit companies, or to evade state laws regulating proration, some companies have part of the fees paid to different companies or have different companies provide part of the service. If more than one company is involved, it may suggest the business is trying to avoid legal restrictions meant to protect consumers.

For more tips, and to learn some warning signs that should lead you to reject an agency, check out the FTC's "Fiscal Fitness: Choosing a Credit Counselor" at www.ftc.gov/bcp/edu/pubs/consumer/credit/cre26.shtm.

Glossary

This glossary defines certain terms that appear frequently in this book.

Acceleration clause. A provision in a contract requiring the debtor to pay the entire balance of the contract immediately because of a failure to meet some condition, such as a failure to make payments on time.

Arrears. A general term used to describe any loan payment or debt that is past due. It's most often used to describe back-owed child support or alimony. Some people use the term "arrearages," which means the same thing.

Balloon payment. A final lump sum payment on an installment contract, such as a mortgage or car loan, which is larger than the earlier payments.

Bankruptcy. A legal proceeding in which you are relieved from paying your debts. There are two kinds of bankruptcies for individuals: Chapter 7 and Chapter 13. In Chapter 7 bankruptcy, you may be required to give up some property in exchange for the erasure of your debts. In Chapter 13 bankruptcy, you don't have to give up any property, but you must pay off a portion of your debts over three to five years. At the end of the three-to-five-year period, the balance of what you owe is wiped out.

Closed-end credit. Credit that usually involves one transaction, such as a car loan or a

mortgage, with a fixed amount borrowed and a fixed repayment plan. (Compare *Open-end credit*, below.)

Collateral. Property pledged as security for repayment of a secured debt.

Cosigner. A person who signs a loan agreement or credit application along with the primary debtor. If the primary debtor does not pay, the cosigner is fully responsible for the loan or debt. Many people use cosigners to qualify for a loan or credit card.

Credit repair. As we use this term, the legitimate steps that people take to rebuild their credit. It also refers to getting outdated, incorrect, or incomplete information removed from one's credit report.

Credit repair organization. A business that charges substantial money and claims to be able to remove negative information from someone's credit report.

Credit score. A numerical rating that predicts how creditworthy a consumer is—that is, how likely the consumer is to repay a loan and make payments when due. A credit score is created, using a statistical program, from information about a consumer and his or her credit experiences, such as bill-paying history, the number and type of accounts, late payments, collection actions, outstanding debt, and the age of accounts, collected from the consumer's credit application and credit report.

Default judgment. If you are sued and you do not file papers in response to the lawsuit within the time allowed, the plaintiff (the person who sued you) can ask the court to enter a default judgment against you. When a default judgment is entered, you have lost the case. You can try to get the default judgment set aside, but it can be difficult to do so.

Deficiency balance. The difference between the amount you owe a creditor who has foreclosed on your house or repossessed an item of personal property and the amount that the sale of the property brings in.

Discharge. When a bankruptcy court erases your debts.

Exempt property or exemption. Items of property you are allowed to keep if a creditor gets a judgment against you or you file for bankruptcy.

Foreclosure. The forced sale of a house by the mortgage lender or another creditor with a lien on the house (such as the IRS or an unpaid contractor) to recover what the homeowner owes.

Guarantor. A person who pledges to repay a loan or debt in the event the primary debtor does not pay. Many people use guarantors to qualify for a loan or credit card.

Installment contract. A written agreement to pay for purchased goods or services by making regularly scheduled payments of principal and interest.

Judgment. The decision issued by a court at the end of a lawsuit.

Judgment creditor. A creditor who has sued you and obtained a court judgment.

Judgment debtor. Once a creditor sues you and gets a court judgment, you may be referred to as a judgment debtor.

Judgment proof. Having little or no property or income that a creditor can legally take to collect on a judgment, now or in the foreseeable future.

Lien. A notice a creditor attaches to property telling the world that the property owner owes the creditor money.

Necessities. Articles needed to sustain life, such as food, clothing, medical care, and shelter.

Nonexempt property. The property a debtor is at risk of losing if a creditor gets a judgment against the debtor or the debtor files for bankruptcy.

Open-end credit. A credit plan that involves repeated transactions, a fluctuating balance, and no fixed repayment period. The creditor sets a credit limit and allows the consumer to charge up to that limit as long as he or she makes required payments. Open-end credit plans are often called “revolving credit,” and include retail installment accounts and bank credit cards.

Postjudgment interest. Interest on a court judgment that a creditor may add from the time the judgment is entered in the court clerk’s record until it is paid.

Prejudgment attachment. A legal procedure that lets an unsecured creditor tie up property before obtaining a court judgment. The attachment freezes the property—it can’t be sold, spent (in the case of money), or given away.

Prejudgment interest. The interest a creditor is entitled to collect under a loan agreement

or by operation of law before obtaining a court judgment.

Prepayment penalty. A fee imposed by some lenders if a loan is paid off early and the lender doesn't earn all the interest it had anticipated.

Secured credit card. A credit card obtained by depositing some money into a savings account while the consumer has no access to that account. The money deposited is security for paying the charges on the card.

Secured creditor. A creditor owed a secured debt—that is, a debt for which payment is guaranteed by a specific item of property (collateral). If the debt isn't paid, the secured creditor can take the collateral.

Secured debt. A debt for which a specific item of property (called "collateral") guarantees payment of the debt. If the debt isn't paid, the creditor can take the collateral.

Security agreement. A contract a consumer must sign when taking out a secured loan. The agreement specifies precisely what property (collateral) can be taken by the creditor in case of default.

Security interest. The right of a secured creditor to take property in the event of default.

Statute of limitations. The time limit to file a lawsuit, as determined by state law.

Unsecured creditor. A creditor who is owed an unsecured debt. If the debtor doesn't pay, an unsecured creditor's primary recourse is to sue, obtain a court judgment, and then attach wages or seize property.

Unsecured debt. A debt for which no specific item of property guarantees repayment.

Wage assignment. A method of voluntarily paying a debt through deductions from the debtor's paycheck.

Wage attachment. A method of involuntarily paying a debt through deductions from the debtor's paycheck, commonly used to collect court judgments and back-owed child support.

Wage withholding. A method of collecting child support through withholding a portion of the debtor's paycheck.





Federal Agencies

Where to Complain About Credit Discrimination

If you believe you have been a victim of credit discrimination, here are the appropriate government agencies to contact:

Consumer Response Center Federal Trade Commission

Washington, DC 20580

Contact the FTC if you have been discriminated against by a store, mortgage company, small loan and finance company, oil company, public utility, state credit union, government lending program, or travel and expense credit card company. Although the FTC doesn't intervene in individual disputes, the information you provide may show a pattern of violations on which it can act.

Comptroller of the Currency Compliance Management

Mail Stop 7-5

Washington, DC 20219

Use this address if your complaint is about a nationally chartered bank ("National" or "N.A." will be in its name).

Federal Deposit Insurance Corporation Consumer Affairs Division

Washington, DC 20429

Contact the FDIC if your complaint is about a state-chartered bank that is insured by the

FDIC but is not a member of the Federal Reserve System.

Office of Thrift Supervision Consumer Affairs Program

Washington, DC 20552

Use this address to complain about a federally chartered or federally insured savings and loan association.

National Credit Union Administration Consumer Affairs Division

Washington, DC 20456

Use this address if your complaint is about a federally chartered credit union.

Department of Justice Civil Rights Division

Washington, DC 20530

You can complain to the Justice Department about any type of creditor.

Board of Governors of the Federal Reserve System Federal Reserve Consumer Help

P.O. Box 1200

Minneapolis, MN 55480

888-851-1920 (TTY: 877-766-8533) toll free

ConsumerHelp@FederalReserve.gov

Regulates state-chartered banks that are members of the Federal Reserve System, bank holding companies, and branches of foreign banks.



Contact Information for Useful Agencies, Organizations, and Other Entities

Annual Credit Report Service

www.annualcreditreport.com

877-322-8228

P.O. Box 105281

Atlanta, GA 30348-5281

AARP

www.aarp.org

**Association for Children for
Enforcement of Support**

www.childsupport-aces.org

888-310-2237

Autopedia

www.autopedia.com

**Aviation Consumer Protection Division,
U.S. Department of Transportation**

<http://airconsumer.ost.dot.gov>

202-366-2220

202-366-0511 (TTY)

Bankrate

www.bankrate.com

**BenefitsCheckup (sponsored by the
National Council on Aging)**

www.benefitscheckup.org

Better Business Bureau

www.bbb.org

**Caine & Weiner, Resource Center,
Summary of Collection Laws**

www.caine-weiner.com

California Courts

www.courtinfo.ca.gov

California Legislative Counsel

www.leginfo.ca.gov

Car Talk

www.cartalk.com

CardTrack.com

www.cardtrack.com

Center for Auto Safety

www.autosafety.org

Center on Budget and Policy Priorities

www.cbpp.org

CheckRite

www.checkritesystems.com

701-214-4123

Chexsystems

www.consumerdebit.com

800-428-9623

Consumer Action

www.consumeraction.gov

**Consumer Credit Reporting
Industry/OptOutPrescreen**

www.optoutprescreen.com

888-567-8688

Consumer Product Safety Commission

www.cpsc.gov

800-638-2772

800-638-8270 (TTY)

Consumer Reports

www.ConsumerReportsHealth.org

Consumers Union

www.consumersunion.org

CoreLogic SafeRent

www.fadvsafere.com

800-815-8664

Cornell Law School Legal Information Institute

www4.law.cornell.edu

Credit Card Connection

www.creditcardconnection.org

CreditScoring.com

www.creditscoring.com

Debtors Anonymous

www.debtorsanonymous.org

800-421-2383

Department of Labor

www.dol.gov

Equifax

www.equifax.com

800-685-1111

P.O. Box 740241, Atlanta, GA 30374

Experian

www.experian.com

888-397-3742

Federal Citizen Information Center

www.pueblo.gsa.gov

Fair Isaac

www.myfico.com

Fannie Mae

www.fanniemae.com

800-732-6643

Federal Communications Commission

www.fcc.gov

888-225-5322

888-835-5322 (TTY)

Federal Deposit Insurance Corporation

www.fdic.gov

Federal Judiciary

www.uscourts.gov

Federal Reserve

www.federalreserve.gov

Federal Student Aid Information Center

<http://studentaid.ed.gov>

800-433-3243

800-730-8913 (TDD)

Federal Trade Commission

www.ftc.gov

FinAid

www.finaid.org

Freddie Mac

www.freddiemac.com

800-FREDDIE

Google Scholar

<http://scholar.google.com>

Government Printing Office

www.gpo.gov

Internal Revenue Service

www.irs.gov

**International Association of
Lemon Law Administrators**

www.ialla.net

ISO

www.iso.com

800-627-3487

Kelley Blue Book

www.kbb.com

LegalConsumer.com

www.legalconsumer.com

Legal Services Corporation

www.lsc.gov

Lexis

www.lexis.com (for legal research)

LexisNexis

<https://personalreports.lexisnexis.com>
877-448-5732 (for credit reports)

Making Home Affordable

www.makinghomeaffordable.gov

Melvyl Catalog

<http://melvyl.cdlib.org>

National Association of Consumer Advocates

www.naca.net

National Automobile Dealers Association

www.nada.com

National Center for Home Equity Conversion

www.reverse.org

National Center for State Courts

www.ncsconline.org

National Consumer Law Center

www.consumerlaw.org
617-542-9595

**National Consumer Law Center's Student
Loan Borrower Assistance Project**

www.studentloanborrowerassistance.org

National Consumers League

www.fraud.org
1701 K Street, NW, Suite 1200
Washington, DC 20006

National Foundation for Credit Counseling

www.nfcc.org

**National Highway Traffic and
Safety Administration**

www.safercar.gov
Vehicle Safety Hotline: 888-327-4236
800-424-9153 (TTY)

National Student Loan Data System

www.nslds.ed.gov

Nellie Mae

www.nelliemae.com
800-367-8848

Office of Child Support Enforcement

www.acf.hhs.gov

Official State Websites

[www.\[state postal code\].gov](http://www.[state postal code].gov)

Privacy Rights Clearinghouse

www.privacyrights.org

Project Vote Smart

www.votesmart.org

Public Citizen

www.citizen.org

Sallie Mae

www.salliemae.com
888-272-5543

Social Security Administration

www.ssa.gov
800-772-1213
800-325-0778 (TTY)

Student Loan Ombudsman

www.ombudsman.ed.gov
877-557-2575

SupportGuidelines.com

www.supportguidelines.com

Telecheck

www.telecheck.com
800-710-9898

TransUnion

www.transunion.com
877-322-8228

Trial Lawyers for Public Justice

www.tlpj.org

**University of California,
California Digital Library**

www.cdlib.org

U.S. Armed Forces Legal Assistance

<http://legalassistance.law.af.mil>

U.S. Bankruptcy Courts

www.uscourts.gov/bankruptcycourts

U.S. Department of Education

www.ed.gov
800-621-3115
800-730-8913 (TDD)

**U.S. Department of Education/
Direct Consolidation Loans**

<http://loanconsolidation.ed.gov>

**U.S. Department of Education/
Federal Student Aid**

www.dl.ed.gov
<http://studentaid.ed.gov>

U.S. Department of Energy

www1.eere.energy.gov

**U.S. Department of Health and Human
Services, Medicare/Medicaid**

www.cms.hhs.gov

**U.S. Department of Health and Human Services/
Office of Child Support Enforcement in the
Administration for Children and Families**

www.acf.hhs.gov/programs/cse

**U.S. Department of Housing and
Urban Development**

www.hud.gov
800-569-4287
800-877-8339 (TTY)

U.S. Government Accountability Office

www.gao.gov

U.S. Library of Congress

<http://thomas.loc.gov>

U.S. Postal Inspectors

<http://postalinspectors.uspis.gov>
800-876-2455

U.S. Public Interest Research Group

www.uspirg.org

U.S. Trustee

www.usdoj.gov/ust

VersusLaw

www.versuslaw.com

Westlaw

www.westlaw.com





Federal and State Exemption Tables

Alabama.....	433	Montana.....	466
Alaska.....	434	Nebraska.....	467
Arizona.....	435	Nevada.....	468
Arkansas.....	436	New Hampshire.....	470
California—System 1.....	438	New Jersey.....	471
California—System 2.....	439	New Mexico.....	472
Colorado.....	440	New York.....	473
Connecticut.....	442	North Carolina.....	474
Delaware.....	443	North Dakota.....	475
District of Columbia.....	444	Ohio.....	476
Florida.....	445	Oklahoma.....	478
Georgia.....	446	Oregon.....	479
Hawaii.....	448	Pennsylvania.....	480
Idaho.....	449	Rhode Island.....	482
Illinois.....	450	South Carolina.....	483
Indiana.....	452	South Dakota.....	484
Iowa.....	453	Tennessee.....	485
Kansas.....	454	Texas.....	486
Kentucky.....	455	Utah.....	488
Louisiana.....	456	Vermont.....	489
Maine.....	458	Virginia.....	490
Maryland.....	459	Washington.....	491
Massachusetts.....	460	West Virginia.....	493
Michigan.....	461	Wisconsin.....	494
Minnesota.....	462	Wyoming.....	495
Mississippi.....	464	Federal Bankruptcy Exemptions.....	496
Missouri.....	465	Federal Nonbankruptcy Exemptions.....	497

Confirm the Information in the Exemption Charts Before Relying on It

The exemptions in the following charts were current when this book went to press, but your state may have changed the law since then. In addition, states often carve out *exceptions* to the exemptions, which are far too detailed to list here. For instance, even if an item is listed as exempt in one of these charts, you might have to give it up to pay a child support or tax debt.

Before relying on any particular exemption, consider:

- reading the exemption statute yourself, using the research information in Ch. 10, and
- cross-checking the chart's information against the exemptions for your state listed on www.legalconsumer.com.

Last, but certainly not least, consult a bankruptcy lawyer.



CAUTION

Some states have other exemptions that apply to judgment creditors. Some states (including but not limited to Arkansas, Georgia, Maryland, and West Virginia) have other exemption amounts that apply to judgment creditors only. Most often, these other amounts apply to the homestead exemption only, but some apply to other property as well. The state

exemptions listed in Appendix C do not include these judgment-creditor-only exemptions. If you want to use an exemption against a judgment creditor, check to see if an amount different from the bankruptcy exemption amount listed in Appendix C, applies. You can find all of your state's exemptions (both bankruptcy and non-bankruptcy) in the National Consumer Law Center's Bankruptcy Law & Practice manual or Fair Debt Collection manual (many law libraries have these books, as do some public libraries). Or contact a local consumer attorney.



CAUTION

Some courts might not allow "bankruptcy specific" exemptions. Eight states have exemption schemes that apply only in bankruptcy (which means debtors cannot use them against judgment creditors). A few courts over the years have determined that such "bankruptcy specific" exemption schemes are unconstitutional. The Sixth Circuit will be reviewing this issue in 2011 (*In re: Sharon Kay Pontius*). Any decision it makes will be binding on courts in that circuit only.

Although the majority of bankruptcy courts in states with bankruptcy specific exemption schemes allow debtors to use these exemptions, you may wish to consult with an attorney if you live in one of these states to find out what exemptions are permitted in your local bankruptcy court. These states are: California, Colorado, Georgia, Michigan, Montana, New York, Ohio, and West Virginia.

Alabama

Federal bankruptcy exemptions not available. All law references are to Alabama Code unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	Real property or mobile home to \$5,000; property cannot exceed 160 acres	6-10-2
	Must record homestead declaration before attempted sale of home	6-10-20
insurance	Annuity proceeds or avails to \$250 per month	27-14-32
	Disability proceeds or avails to an average of \$250 per month	27-14-31
	Fraternal benefit society benefits	27-34-27
	Life insurance proceeds or avails	6-10-8; 27-14-29
	Life insurance proceeds or avails if clause prohibits proceeds from being used to pay beneficiary's creditors	27-15-26
	Mutual aid association benefits	27-30-25
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	IRAs & other retirement accounts	19-38-508
	Judges (only payments being received)	12-18-10(a),(b)
	Law enforcement officers	36-21-77
	Spendthrift trusts (with exceptions)	19-38-501 to 503
	State employees	36-27-28
	Teachers	16-25-23
personal property	Books of debtor & family	6-10-6
	Burial place for self & family	6-10-5
	Church pew for self & family	6-10-5
	Clothing of debtor & family	6-10-6
	Family portraits or pictures	6-10-6
public benefits	Aid to blind, aged, disabled, & other public assistance	38-4-8
	Crime victims' compensation	15-23-15(e)
	Southeast Asian War POWs' benefits	31-7-2
	Unemployment compensation	25-4-140
	Workers' compensation	25-5-86(b)
tools of trade	Arms, uniforms, equipment that state military personnel are required to keep	31-2-78
wages	With respect to consumer loans, consumer credit sales, & consumer leases, 75% of weekly net earnings or 30 times the federal minimum hourly wage; all other cases, 75% of earned but unpaid wages; bankruptcy judge may authorize more for low-income debtors	5-19-15; 6-10-7
wildcard	\$3,000 of any personal property, except wages	6-10-6

Alaska

Alaska law states that only the items found in Alaska Statutes §§ 9.38.010, 9.38.015(a), 9.38.017, 9.38.020, 9.38.025, and 9.38.030 may be exempted in bankruptcy. In *In re McNutt*, 87 B.R. 84 (9th Cir. 1988), however, an Alaskan debtor used the federal bankruptcy exemptions. All law references are to Alaska Statutes unless otherwise noted.

Alaska exemption amounts are adjusted regularly by administrative order. Current amounts are found at 8 Alaska Admin. Code tit. 8, § 95.030.

ASSET	EXEMPTION	LAW
homestead	\$70,200 (joint owners may each claim a portion, but total can't exceed \$70,200)	09.38.010(a)
insurance	Disability benefits	09.38.015(b); 09.38.030(e)(1),(5)
	Fraternal benefit society benefits	21.84.240
	Life insurance or annuity contracts, total avails to \$100,000	09.38.025
	Medical, surgical, or hospital benefits	09.38.015(a)(3)
miscellaneous	Alimony, to extent wages exempt	09.38.030(e)(2)
	Child support payments made by collection agency	09.38.015(b)
	Liquor licenses	09.38.015(a)(7)
	Property of business partnership	09.38.100(b)
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	Elected public officers (only benefits building up)	09.38.015(b)
	ERISA-qualified benefits deposited more than 120 days before filing bankruptcy	09.38.017
	Judicial employees (only benefits building up)	09.38.015(b)
	Public employees (only benefits building up)	09.38.015(b); 39.35.505
	Roth & traditional IRAs, medical savings accounts	09.38.017(e)(3)
	Teachers (only benefits building up)	09.38.015(b)
	Other pensions, to extent wages exempt (only payments being received)	09.38.030(e)(5)
personal property	Books, musical instruments, clothing, family portraits, household goods, & heirlooms to \$3,900 total	09.38.020(a)
	Building materials	34.35.105
	Burial plot	09.38.015(a)(1)
	Cash or other liquid assets to \$1,820; for sole wage earner in household, \$2,860 (restrictions apply—see <i>wages</i>)	09.38.030(b)
	Deposit in apartment or condo owners' association	09.38.010(e)
	Health aids needed	09.38.015(a)(2)
	Jewelry to \$1,300	09.38.020(b)
	Money held in mortgage escrow accounts after July 1, 2008	09.38.015(e)
	Motor vehicle to \$3,900; vehicle's market value can't exceed \$26,000	09.38.020(e)
	Personal injury recoveries, to extent wages exempt	09.38.030(e)(3)
	Pets to \$1,300	09.38.020(d)
	Proceeds for lost, damaged, or destroyed exempt property	09.38.060
	Tuition credits under an advance college tuition payment contract	09.38.015(a)(8)
	Wrongful death recoveries, to extent wages exempt	09.38.030(e)(3)

public benefits	Adult assistance to elderly, blind, disabled	47.25.550
	Alaska benefits for low-income seniors	09.38.015(a)(11)
	Alaska longevity bonus	09.38.015(a)(5)
	Crime victims' compensation	09.38.015(a)(4)
	Federally exempt public benefits paid or due	09.38.015(a)(6)
	General relief assistance	47.25.210
	Senior care (prescription drug) benefits	09.38.015(a)(10)
	20% of permanent fund dividends	43.23.065
	Unemployment compensation	09.38.015(b); 23.20.405
	Workers' compensation	23.30.160
tools of trade	Implements, books, & tools of trade to \$3,640	09.38.020(c)
wages	Weekly net earnings to \$456; for sole wage earner in a household, \$716; if you don't receive weekly or semimonthly pay, you can claim \$1,820 in cash or liquid assets paid any month; for sole wage earner in household, \$2,860	9.38.030(a),(b); 9.38.050(b)
wildcard	None	

Arizona

Federal bankruptcy exemptions not available. All law references are to Arizona Revised Statutes unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	Real property, an apartment, or mobile home you occupy to \$150,000; sale proceeds exempt 18 months after sale or until new home purchased, whichever occurs first (spouses may not double)	33-1101(A)
	May record homestead declaration to clarify which one of multiple eligible parcels is being claimed as homestead	33-1102
insurance	Fraternal benefit society benefits	20-877
	Group life insurance policy or proceeds	20-1132
	Health, accident, or disability benefits	33-1126(A)(4)
	Life insurance cash value or proceeds, or annuity contract if owned at least two years and beneficiary is dependent family member	33-1126(A)(6); 20-1131(D)
	Life insurance proceeds to \$20,000 if beneficiary is spouse or child	33-1126(A)(1)
miscellaneous	Alimony, child support needed for support	33-1126(A)(3)
	Minor child's earnings, unless debt is for child	33-1126(A)(2)
pensions <i>see also wages</i>	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	Board of regents members, faculty & administrative officers under board's jurisdiction	15-1628(l)
	District employees	48-227
	ERISA-qualified benefits deposited over 120 days before filing	33-1126(B)
	IRAs & Roth IRAs	33-1126(B); <i>In re Herrscher</i> , 121 B.R. 29 (D. Ariz. 1989)
	Firefighters	9-968
	Police officers	9-931
	Public Safety Personnel Retirement System	38-850(c)
	Rangers	41-955
	State employees' retirement & disability	38-792; 38-797.11

personal property <i>spouses may double all personal property</i>	2 beds & bedding; 1 living room chair per person; 1 dresser, table, lamp; kitchen table; dining room table & 4 chairs (1 more per person); living room carpet or rug; couch; 3 lamps; 3 coffee or end tables; pictures, paintings, personal drawings, family portraits; refrigerator, stove, washer, dryer, vacuum cleaner; TV, radio, stereo, alarm clock to \$4,000 total	33-1123
	Bank deposit to \$150 in one account	33-1126(A)(9)
	Bible; bicycle; sewing machine; typewriter; burial plot; rifle, pistol, or shotgun to \$500 total	33-1125
	Books to \$250; clothing to \$500; wedding & engagement rings to \$1,000; watch to \$100; pets, horses, milk cows, & poultry to \$500; musical instruments to \$250	33-1125
	Food & fuel to last 6 months	33-1124
	Funeral deposits to \$5,000	32-1391.05(4)
	Health aids	33-1125(9)
	Motor vehicle to \$5,000 (\$10,000, if debtor is physically disabled)	33-1125(8)
	Prepaid rent or security deposit to \$1,000 or 1½ times your rent, whichever is less, in lieu of homestead	33-1126(C)
	Proceeds for sold or damaged exempt property	33-1126(A)(5),(8)
public benefits	Wrongful death awards	12-592
	Unemployment compensation	23-783(A)
	Welfare benefits	46-208
tools of trade <i>husband & wife may double</i>	Workers' compensation	23-1068(B)
	Arms, uniforms, & accoutrements of profession or office required by law	33-1130(3)
	Farm machinery, utensils, seed, instruments of husbandry, feed, grain, & animals to \$2,500 total	33-1130(2)
	Library & teaching aids of teacher	33-1127
wages	Tools, equipment, instruments, & books to \$2,500	33-1130(1)
	75% of earned but unpaid weekly net earnings or 30 times the federal minimum hourly wage; 50% of wages for support orders; bankruptcy judge may authorize more for low-income debtors	33-1131
wildcard	None	

Arkansas

Federal bankruptcy exemptions available. All law references are to Arkansas Code Annotated unless otherwise noted.

Note: *In re Holt*, 894 F.2d 1005 (8th Cir. 1990), held that Arkansas residents are limited to exemptions in the Arkansas Constitution. Statutory exemptions can still be used within Arkansas for nonbankruptcy purposes, but they cannot be claimed in bankruptcy.

ASSET	EXEMPTION	LAW
homestead <i>choose</i> <i>Option 1 or 2</i>	1. For married person or head of family: unlimited exemption on real or personal property used as residence to ¼ acre in city, town, or village, or 80 acres elsewhere; if property is between ¼ and 1 acre in city, town, or village, or 80 to 160 acres elsewhere, additional limit is \$2,500; homestead may not exceed 1 acre in city, town, or village, or 160 acres elsewhere (spouses may not double)	Constitution 9-3; 9-4, 9-5; 16-66-210; 16-66-218(b)(3), (4); <i>In re Stevens</i> , 829 F.2d 693 (8th Cir. 1987)
	2. Real or personal property used as residence to \$800 if single; \$1,250 if married	16-66-218(a)(1)

insurance	Annuity contract	23-79-134
	Disability benefits	23-79-133
	Fraternal benefit society benefits	23-74-403
	Group life insurance	23-79-132
	Life, health, accident, or disability cash value or proceeds paid or due to \$500	16-66-209; Constitution 9-1, 9-2; <i>In re Holt</i> , 894 F.2d 1005 (8th Cir. 1990)
	Life insurance proceeds if clause prohibits proceeds from being used to pay beneficiary's creditors	23-79-131
	Life insurance proceeds or avails if beneficiary isn't the insured	23-79-131
	Mutual assessment life or disability benefits to \$1,000	23-72-114
	Stipulated insurance premiums	23-71-112
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	Disabled firefighters	24-11-814
	Disabled police officers	24-11-417
	Firefighters	24-10-616
	IRA deposits to \$20,000 if deposited over 1 year before filing for bankruptcy	16-66-218(b)(16)
	Police officers	24-10-616
	School employees	24-7-715
	State police officers	24-6-205; 24-6-223
personal property	Burial plot to 5 acres, if choosing federal homestead exemption (Option 2)	16-66-207; 16-66-218(a)(1)
	Clothing	Constitution 9-1, 9-2
	Motor vehicle to \$1,200	16-66-218(a)(2)
	Prepaid funeral trusts	23-40-117
	Wedding rings	16-66-219
public benefits	Crime victims' compensation	16-90-716(e)
	Unemployment compensation	11-10-109
	Workers' compensation	11-9-110
tools of trade	Implements, books, & tools of trade to \$750	16-66-218(a)(4)
wages	Earned but unpaid wages due for 60 days; in no event less than \$25 per week	16-66-208; 16-66-218(b)(6)
wildcard	\$500 of any personal property if married or head of family; \$200 if not married	Constitution 9-1, 9-2; 16-66-218(b)(1),(2)

California—System 1

Federal bankruptcy exemptions not available. California has two systems; you must select one or the other. All law references are to California Code of Civil Procedure unless otherwise noted. Many exemptions do not apply to claims for child support.

Note: California's exemption amounts are no longer updated in the statutes themselves. California Code of Civil Procedure Section 740.150 deputized the California Judicial Council to update the exemption amounts every three years. (The next revision will be in 2013.) As a result, the amounts listed in this chart will not match the amounts that appear in the cited statutes. The current exemption amounts can be found on the California Judicial Council website, www.courtinfo.ca.gov/forms/exemptions.htm.

ASSET	EXEMPTION	LAW
homestead	Real or personal property you occupy including mobile home, boat, stock cooperative, community apartment, planned development, or condo to \$75,000 if single & not disabled; \$100,000 for families if no other member has a homestead (if only one spouse files, may exempt one-half of amount if home held as community property & all of amount if home held as tenants in common); \$175,000 if 65 or older, or physically or mentally disabled; \$175,000 if 55 or older, single, & earn gross annual income under \$15,000 or married & earn gross annual income under \$20,000 & creditors seek to force the sale of your home; forced sale proceeds received exempt for 6 months after (spouses may not double); separated married debtor may claim homestead in community property homestead occupied by other spouse	704.710; 704.720; 704.730; <i>In re McFall</i> , 112 B.R. 336 (9th Cir. BAP 1990)
	May file homestead declaration to protect exemption amount from attachment of judicial liens and to protect proceeds of voluntary sale for 6 months	704.920
insurance	Disability or health benefits	704.130
	Fidelity bonds	Labor 404
	Fraternal benefit society benefits	704.170
	Fraternal unemployment benefits	704.120
	Homeowners' insurance proceeds for 6 months after received, to homestead exemption amount	704.720(b)
	Life insurance proceeds if clause prohibits proceeds from being used to pay beneficiary's creditors	Ins. 10132; Ins. 10170; Ins. 10171
	Matured life insurance benefits needed for support	704.100(c)
	Unmatured life insurance policy cash surrender value completely exempt; loan value exempt to \$11,475	704.100(b)
miscellaneous	Business or professional licenses	695.060
	Inmates' trust funds to \$1,425 (spouses may not double)	704.090
	Property of business partnership	Corp. 16501-04
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	County employees	Gov't 31452
	County firefighters	Gov't 32210
	County peace officers	Gov't 31913
	Private retirement benefits, including IRAs & Keoghs	704.115
	Public employees	Gov't 21255
	Public retirement benefits	704.110

personal property	Appliances, furnishings, clothing, & food	704.020
	Bank deposits from Social Security Administration to \$2,875 (\$4,300 for husband & wife); unlimited if SS funds are not commingled with other funds	704.080
	Bank deposits of other public benefits to \$1,425 (\$2,150 for husband & wife)	
	Building materials to repair or improve home to \$2,875 (spouses may not double)	704.030
	Burial plot	704.200
	Funds held in escrow	Fin. 17410
	Health aids	704.050
	Jewelry, heirlooms, & art to \$7,175 total (spouses may not double)	704.040
	Motor vehicles to \$2,725, or \$2,725 in auto insurance for loss or damages (spouses may not double)	704.010
	Personal injury & wrongful death causes of action	704.140(a); 704.150(a)
public benefits	Personal injury & wrongful death recoveries needed for support; if receiving installments, at least 75%	704.140(b),(c),(d); 704.150(b),(c)
	Aid to blind, aged, disabled; public assistance	704.170
	Financial aid to students	704.190
	Relocation benefits	704.180
	Unemployment benefits	704.120
	Union benefits due to labor dispute	704.120(b)(5)
	Workers' compensation	704.160
tools of trade	Tools, implements, materials, instruments, uniforms, one commercial vehicle, books, furnishings, & equipment to \$7,175 total (\$14,350 total if used by both spouses in same occupation)	704.060
	Commercial vehicle (Vehicle Code § 260) to \$4,850 (\$9,700 total if used by both spouses in same occupation) (this counts toward total tools of trade exemption)	704.060
wages	Minimum 75% of wages paid within 30 days prior to filing	704.070
	Public employees' vacation credits; if receiving installments, at least 75%	704.113
wildcard	None	

California—System 2

Refer to the notes for California—System 1, above.

Note: Married couples may not double any exemptions. (*In re Talmadge*, 832 F.2d 1120 (9th Cir. 1987); *In re Baldwin*, 70 B.R. 612 (9th Cir. BAP 1987).)

One court has argued that System 2 exemptions are not available to debtors in bankruptcy. To date, the vast majority of (if not all) California bankruptcy courts accept System 2 exemptions. However, you may wish check with a bankruptcy attorney to find out which exemptions are acceptable in your local court. See, “Some courts might not allow ‘bankruptcy specific’ exemptions,” at the beginning of this appendix for more information.

ASSET	EXEMPTION	LAW
homestead	Real or personal property, including co-op, used as residence to \$22,075; unused portion of homestead may be applied to any property	703.140(b)(1)
insurance	Disability benefits	703.140(b)(10)(C)
	Life insurance proceeds needed for support of family	703.140(b)(11)(C)
	Unmatured life insurance contract accrued avails to \$11,800	703.140(b)(8)
	Unmatured life insurance policy other than credit	703.140(b)(7)

miscellaneous	Alimony, child support needed for support	703.140(b)(10)(D)
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	ERISA-qualified benefits needed for support	703.140(b)(10)(E)
personal property	Animals, crops, appliances, furnishings, household goods, books, musical instruments, & clothing to \$550 per item	703.140(b)(3)
	Burial plot to \$22,075, in lieu of homestead	703.140(b)(1)
	Health aids	703.140(b)(9)
	Jewelry to \$1,425	703.140(b)(4)
	Motor vehicle to \$3,525	703.140(b)(2)
	Personal injury recoveries to \$22,075 (not to include pain & suffering; pecuniary loss)	703.140(b)(11)(D),(E)
	Wrongful death recoveries needed for support	703.140(b)(11)(B)
public benefits	Crime victims' compensation	703.140(b)(11)(A)
	Public assistance	703.140(b)(10)(A)
	Social Security	703.140(b)(10)(A)
	Unemployment compensation	703.140(b)(10)(A)
	Veterans' benefits	703.140(b)(10)(B)
tools of trade	Implements, books, & tools of trade to \$2,200	703.140(b)(6)
wages	None (use federal nonbankruptcy wage exemption)	
wildcard	\$1,175 of any property	703.140(b)(5)
	Unused portion of homestead or burial exemption of any property	703.140(b)(5)

Colorado

Federal bankruptcy exemptions not available. All law references are to Colorado Revised Statutes unless otherwise noted.

Some of the exemptions in this table may not be available to you in some bankruptcy courts. Before filing bankruptcy, check with a bankruptcy attorney to find out which exemptions are acceptable in your court. See, "Some courts might not allow 'bankruptcy specific' exemptions," at the beginning of this appendix for more information.

ASSET	EXEMPTION	LAW
homestead	Real property, mobile home, manufactured home, or house trailer you occupy to \$60,000; \$90,000 if owner, spouse, or dependent is disabled or at least 60 years old; sale proceeds exempt 2 years after received	38-41-201; 38-41-201.6; 38-41-203; 38-41-207; <i>In re Pastrana</i> , 216 B.R. 948 (D. Colo., 1998)
	Spouse or child of deceased owner may claim homestead exemption	38-41-204
insurance	Disability benefits to \$200 per month; if lump sum, entire amount exempt	10-16-212
	Fraternal benefit society benefits	10-14-403
	Group life insurance policy or proceeds	10-7-205
	Homeowners' insurance proceeds for 1 year after received, to homestead exemption amount	38-41-209
	Life insurance cash surrender value to \$50,000, except contributions to policy within past 48 months	13-54-102(1)(l)
	Life insurance proceeds if clause prohibits proceeds from being used to pay beneficiary's creditors	10-7-106

miscellaneous	Child support or domestic support obligation	13-54-102(u) 13-54-102.5
	Property of business partnership	7-60-125
pensions <i>see also wages</i>	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	ERISA-qualified benefits, including IRAs & Roth IRAs	13-54-102(1)(s)
	Firefighters & police officers	31-30.5-208; 31-31-203
	Public employees' pensions, deferred compensation, & defined contribution plans	24-51-212
	Teachers	22-64-120
	Veteran's pension for veteran, spouse, or dependents if veteran served in war or armed conflict	13-54-102(1)(h); 13-54-104
personal property	1 burial plot per family member	13-54-102(1)(d)
	Clothing to \$1,500	13-54-102(1)(a)
	Food & fuel to \$600	13-54-102(1)(f)
	Health aids	13-54-102(1)(p)
	Household goods to \$3,000	13-54-102(1)(e)
	Jewelry & articles of adornment to \$2,000	13-54-102(1)(b)
	Motor vehicles or bicycles used for work to \$5,000; \$10,000 if used by a debtor or by a dependent who is disabled or 60 or over	13-54-102(j)(l), (ll)
	Personal injury recoveries	13-54-102(1)(n)
	Family pictures & books to \$1,500	13-54-102(1)(c)
	Proceeds for damaged exempt property	13-54-102(1)(m)
	Security deposits	13-54-102(1)(r)
public benefits	Aid to blind, aged, disabled; public assistance	26-2-131
	Crime victims' compensation	13-54-102(1)(q); 24-4.1-114
	Disability benefits to \$3,000	13-54-102(v)
	Earned income tax credit or refund	13-54-102(1)(o)
	Unemployment compensation	8-80-103
	Veteran's benefits for veteran, spouse, or child if veteran served in war or armed conflict	13-54-102(1)(h)
	Workers' compensation	8-42-124
tools of trade	Livestock or other animals, machinery, tools, equipment, & seed of person engaged in agriculture, to \$50,000 total	13-54-102(1)(g)
	Professional's library to \$3,000 (if not claimed under other tools of trade exemption)	13-54-102(1)(k)
	Stock in trade, supplies, fixtures, tools, machines, electronics, equipment, books, & other business materials, to \$20,000 total	13-54-102(1)(i)
	Military equipment personally owned by members of the National Guard	13-54-102(1)(h.5)
wages	Minimum 75% of weekly net earnings or 30 times the federal or state minimum wage, whichever is greater, including pension & insurance payments	13-54-104
wildcard	None	

Connecticut

Federal bankruptcy exemptions available. All law references are to Connecticut General Statutes Annotated unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	Owner-occupied real property, including co-op or mobile manufactured home, to \$75,000; applies only to claims arising after 1993, but to \$125,000 in the case of a money judgment arising out of services provided at a hospital	52-352a(e); 52-352b(t)
insurance	Disability benefits paid by association for its members	52-352b(p)
	Fraternal benefit society benefits	38a-637
	Health or disability benefits	52-352b(e)
	Life insurance proceeds if clause prohibits proceeds from being used to pay beneficiary's creditors	38a-454
	Life insurance proceeds or avails	38a-453
	Unmatured life insurance policy avails to \$4,000 if beneficiary is dependent	52-352b(s)
miscellaneous	Alimony, to extent wages exempt	52-352b(n)
	Child support	52-352b(h)
	Farm partnership animals & livestock feed reasonably required to run farm where at least 50% of partners are members of same family	52-352d
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	ERISA-qualified benefits, including IRAs, Roth IRAs, & Keoghs, to extent wages exempt	52-321a; 52-352b(m)
	Medical savings account	52-321a
	Municipal employees	7-446
	State employees	5-171; 5-192w
	Teachers	10-183q
personal property	Appliances, food, clothing, furniture, bedding	52-352b(a)
	Burial plot	52-352b(c)
	Health aids needed	52-352b(f)
	Motor vehicle to \$1,500	52-352b(j)
	Proceeds for damaged exempt property	52-352b(q)
	Residential utility & security deposits for 1 residence	52-3252b(l)
	Spendthrift trust funds required for support of debtor & family	52-321(d)
	Transfers to a licensed debt adjuster	52-352b(u)
	Tuition savings accounts	52-321a(E)
	Wedding & engagement rings	52-352b(k)
public benefits	Crime victims' compensation	52-352b(o); 54-213
	Public assistance	52-352b(d)
	Social Security	52-352b(g)
	Unemployment compensation	31-272(c); 52-352b(g)
	Veterans' benefits	52-352b(g)
	Workers' compensation	52-352b(g)

tools of trade	Arms, military equipment, uniforms, musical instruments of military personnel	52-352b(i)
	Tools, books, instruments, & farm animals needed	52-352b(b)
wages	Minimum 75% of earned but unpaid weekly disposable earnings, or 40 times the state or federal hourly minimum wage, whichever is greater	52-361a(f)
wildcard	\$1,000 of any property	52-352b(r)

Delaware

Federal bankruptcy exemptions not available. All law references are to Delaware Code Annotated (in the form title number-section number) unless otherwise noted.

Note: A single person may exempt no more than \$25,000 total in all exemptions (not including retirement plans and principal residence); a husband & wife may exempt no more than \$50,000 total (10-4914).

ASSET	EXEMPTION	LAW
homestead	Real property or manufactured home used as principal residence to \$75,000 in 2010, \$100,000 in 2011, and \$125,000 in 2012; \$125,000 for working or married persons where one spouse is 65 or older (spouses may not double)	10-4914(c)
	Property held as tenancy by the entirety may be exempt against debts owed by only one spouse	<i>In re Kelley</i> , 289 B.R. 38 (Bankr. D. Del. 2003)
insurance	Annuity contract proceeds to \$350 per month	18-2728
	Fraternal benefit society benefits	18-6218
	Group life insurance policy or proceeds	18-2727
	Health or disability benefits	18-2726
	Life insurance proceeds if clause prohibits proceeds from being used to pay beneficiary's creditors	18-2729
	Life insurance proceeds or avails	18-2725
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	IRAs, Roth IRAs, & any other retirement plans	10-4915
	Kent County employees	9-4316
	Police officers	11-8803
	State employees	29-5503
	Volunteer firefighters	16-6653
personal property	Bible, books, & family pictures	10-4902(a)
	Burial plot	10-4902(a)
	Church pew or any seat in public place of worship	10-4902(a)
	Clothing, includes jewelry	10-4902(a)
	College investment plan account (limit for year before filing is \$5,000 or average of past two years' contribution, whichever is more)	10-4916
	Principal and income from spendthrift trusts	12-3536
	Pianos & leased organs	10-4902(d)
	Sewing machines	10-4902(c)

public benefits	Aid to blind	31-2309
	Aid to aged, disabled; general assistance	31-513
	Crime victims' compensation	11-9011
	Unemployment compensation	19-3374
	Workers' compensation	19-2355
tools of trade	Tools of trade and/or vehicle necessary for employment to \$15,000 each	10-4914(c)
	Tools, implements, & fixtures to \$75 in New Castle & Sussex Counties; to \$50 in Kent County	10-4902(b)
wages	85% of earned but unpaid wages	10-4913
wildcard	\$500 of any personal property, except tools of trade, if head of family	10-4903

District of Columbia

Federal bankruptcy exemptions available. All law references are to District of Columbia Code unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	Any property used as a residence or co-op that debtor or debtor's dependent uses as a residence	15-501(a)(14)
	Property held as tenancy by the entirety may be exempt against debts owed by only one spouse	<i>Estate of Wall</i> , 440 F.2d 215 (D.C. Cir. 1971)
insurance	Disability benefits	15-501(a)(7); 31-4716.01
	Fraternal benefit society benefits	31-5315
	Group life insurance policy or proceeds	31-4717
	Life insurance payments	15-501(a)(11)
	Life insurance proceeds if clause prohibits proceeds from being used to pay beneficiary's creditors	31-4719
	Life insurance proceeds or avails	31-4716
	Other insurance proceeds to \$200 per month, maximum 2 months, for head of family; else \$60 per month	15-503
miscellaneous	Unmatured life insurance contract other than credit life insurance	15-501(a)(5)
	Alimony or child support	15-501(a)(7)
pensions <i>see also wages</i>	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	ERISA-qualified benefits, IRAs, Keoghs, etc. to maximum deductible contribution	15-501(b)(9)
	Any stock bonus, annuity, pension, or profit-sharing plan	15-501(a)(7)
	Judges	11-1570(f)
	Public school teachers	38-2001.17; 38-2021.17
personal property	Appliances, books, clothing, household furnishings, goods, musical instruments, pets to \$425 per item or \$8,625 total	15-501(a)(2)
	Cemetery & burial funds	43-111
	Cooperative association holdings to \$50	29-928
	Food for 3 months	15-501(a)(12)
	Health aids	15-501(a)(6)
	Higher education tuition savings account	47-4510
	Residential condominium deposit	42-1904.09

personal property (continued)	All family pictures; all the family library to \$400	15-501(a)(8)
	Motor vehicle to \$2,575	15-501(a)(1)
	Payment, including pain & suffering, for loss of debtor or person depended on	15-501(a)(11)
	Uninsured motorist benefits	31-2408.01(h)
	Wrongful death damages	15-501(a)(11); 16-2703
public benefits	Aid to blind, aged, disabled; general assistance	4-215.01
	Crime victims' compensation	4-507(e); 15-501(a)(11)
	Social Security	15-501(a)(7)
	Unemployment compensation	51-118
	Veterans' benefits	15-501(a)(7)
	Workers' compensation	32-1517
tools of trade	Library, furniture, tools of professional or artist to \$300	15-501(a)(13)
	Tools of trade or business to \$1,625	15-501(a)(5)
	Mechanic's tools to \$200	15-503(b)
	Seal & documents of notary public	1-1206
wages	Minimum 75% of earned but unpaid wages, pension payments; bankruptcy judge may authorize more for low-income debtors	16-572
	Nonwage (including pension & retirement) earnings to \$200 per month for head of family; else \$60 per month for a maximum of two months	15-503
	Payment for loss of future earnings	15-501(e)(11)
wildcard	Up to \$850 in any property, plus up to \$8,075 of unused homestead exemption	15-501(a)(3)

Florida

Federal bankruptcy exemptions not available. All law references are to Florida Statutes Annotated unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	Real or personal property including mobile or modular home to unlimited value; cannot exceed half acre in municipality or 160 acres elsewhere; spouse or child of deceased owner may claim homestead exemption	222.01; 222.02; 222.03; 222.05; Constitution 10-4 <i>In re Colwell</i> , 196 F.3d 1225 (11th Cir. 1999)
	May file homestead declaration	222.01
	Property held as tenancy by the entirety may be exempt against debts owed by only one spouse	<i>Havoco of America, Ltd. v. Hill</i> , 197 F.3d 1135 (11th Cir. 1999)
insurance	Annuity contract proceeds; does not include lottery winnings	222.14; <i>In re Pizzi</i> , 153 B.R. 357 (S.D. Fla. 1993)
	Death benefits payable to a specific beneficiary, not the deceased's estate	222.13
	Disability or illness benefits	222.18
	Fraternal benefit society benefits	632.619
	Life insurance cash surrender value	222.14
miscellaneous	Alimony, child support needed for support	222.201
	Damages to employees for injuries in hazardous occupations	769.05

pensions <i>see also wages</i>	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	County officers, employees	122.15
	ERISA-qualified benefits, including IRAs & Roth IRAs	222.21(2)
	Firefighters	175.241
	Police officers	185.25
	State officers, employees	121.131
	Teachers	238.15
personal property	Any personal property to \$1,000 (husband & wife may double); to \$4,000 if no homestead claimed	Constitution 10-4; <i>In re Hawkins</i> , 51 B.R. 348 (S.D. Fla. 1985)
	Federal income tax refund or credit	222.25
	Health aids	222.25
	Motor vehicle to \$1,000	222.25
	Pre-need funeral contract deposits	497.56(8)
	Prepaid college education trust deposits	222.22(1)
	Prepaid hurricane savings accounts	222.22(4)
	Prepaid medical savings account deposits	222.22(2)
public benefits	Crime victims' compensation, unless seeking to discharge debt for treatment of injury incurred during the crime	960.14
	Public assistance	222.201
	Social Security	222.201
	Unemployment compensation	222.201; 443.051(2),(3)
	Veterans' benefits	222.201; 744.626
	Workers' compensation	440.22
tools of trade	None	
wages	100% of wages for heads of family up to \$750 per week either unpaid or paid & deposited into bank account for up to 6 months	222.11
	Federal government employees' pension payments needed for support & received 3 months prior	222.21
wildcard	See personal property	

Georgia

Federal bankruptcy exemptions not available. All law references are to the Official Code of Georgia Annotated unless otherwise noted.

Some of the exemptions in this table may not be available to you in some bankruptcy courts. Before filing bankruptcy, check with a bankruptcy attorney to find out which exemptions are acceptable in your court. See, "Some courts might not allow 'bankruptcy specific' exemptions," at the beginning of this appendix for more information.

ASSET	EXEMPTION	LAW
homestead	Real or personal property, including co-op, used as residence to \$10,000 (to \$20,000 if married and debtor spouse is sole owner); up to \$5,000 of unused portion of homestead may be applied to any property	44-13-100(a)(1); 44-13-100(a)(6); <i>In re Burnett</i> , 303 B.R. 684 (M.D. Ga. 2003)

insurance	Annuity & endowment contract benefits	33-28-7
	Disability or health benefits to \$250 per month	33-29-15
	Fraternal benefit society benefits	33-15-62
	Group insurance	33-30-10
	Proceeds & avails of life insurance	33-26-5; 33-25-11
	Life insurance proceeds if policy owned by someone you depended on, needed for support	44-13-100(a)(11)(C)
	Unmatured life insurance contract	44-13-100(a)(8)
	Unmatured life insurance dividends, interest, loan value, or cash value to \$2,000 if beneficiary is you or someone you depend on	44-13-100(a)(9)
miscellaneous	Alimony, child support needed for support	44-13-100(a)(2)(D)
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	Employees of nonprofit corporations	44-13-100(a)(2.1)(B)
	ERISA-qualified benefits & IRAs	18-4-22
	Public employees	44-13-100(a)(2.1)(A); 47-2-332
	Payments from IRA necessary for support	44-13-100(a)(2)(F)
	Other pensions needed for support	18-4-22; 44-13-100(a)(2)(E); 44-13-100(a)(2.1)(C)
personal property	Animals, crops, clothing, appliances, books, furnishings, household goods, musical instruments to \$300 per item, \$5,000 total	44-13-100(a)(4)
	Burial plot, in lieu of homestead	44-13-100(a)(1)
	Compensation for lost future earnings needed for support to \$7,500	44-13-100(a)(11)(E)
	Health aids	44-13-100(a)(10)
	Jewelry to \$500	44-13-100(a)(5)
	Motor vehicles to \$3,500	44-13-100(a)(3)
	Personal injury recoveries to \$10,000	44-13-100(a)(11)(D)
	Wrongful death recoveries needed for support	44-13-100(a)(11)(B)
public benefits	Aid to blind	49-4-58
	Aid to disabled	49-4-84
	Crime victims' compensation	44-13-100(a)(11)(A)
	Local public assistance	44-13-100(a)(2)(A)
	Old age assistance	49-4-35
	Social Security	44-13-100(a)(2)(A)
	Unemployment compensation	44-13-100(a)(2)(A)
	Veterans' benefits	44-13-100(a)(2)(B)
	Workers' compensation	34-9-84
tools of trade	Implements, books, & tools of trade to \$1,500	44-13-100(a)(7)
wages	Minimum 75% of earned but unpaid weekly disposable earnings, or 30 times the state or federal hourly minimum wage, whichever is greater, for private & federal workers; bankruptcy judge may authorize more for low-income debtors	18-4-20; 18-4-21
wildcard	\$600 of any property	44-13-100(a)(6)
	Unused portion of homestead exemption to \$5,000	44-13-100(a)(6)

Hawaii

Federal bankruptcy exemptions available. All law references are to Hawaii Revised Statutes unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	Head of family or over 65 to \$30,000; all others to \$20,000; property cannot exceed 1 acre; sale proceeds exempt for 6 months after sale (spouses may not double)	651-91; 651-92; 651-96
	Property held as tenancy by the entirety may be exempt against debts owed by only one spouse	<i>Security Pacific Bank v. Chang</i> , 818 F.Supp. 1343 (D. Haw. 1993)
insurance	Annuity contract or endowment policy proceeds if beneficiary is insured's spouse, child, or parent	431:10-232(b)
	Accident, health, or sickness benefits	431:10-231
	Fraternal benefit society benefits	432:2-403
	Group life insurance policy or proceeds	431:10-233
	Life insurance proceeds if clause prohibits proceeds from being used to pay beneficiary's creditors	431:10D-112
	Life or health insurance policy for spouse or child	431:10-234
miscellaneous	Property of business partnership	425-125
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	IRAs, Roth IRAs, and ERISA-qualified benefits deposited over 3 years before filing bankruptcy	651-124
	Firefighters	88-169
	Police officers	88-169
	Public officers & employees	88-91; 653-3
personal property	Appliances & furnishings	651-121(1)
	Books	651-121(1)
	Burial plot to 250 sq. ft. plus tombstones, monuments, & fencing	651-121(4)
	Clothing	651-121(1)
	Jewelry, watches, & articles of adornment to \$1,000	651-121(1)
	Motor vehicle to wholesale value of \$2,575	651-121(2)
	Proceeds for sold or damaged exempt property; sale proceeds exempt for 6 months after sale	651-121(5)
public benefits	Crime victims' compensation & special accounts created to limit commercial exploitation of crimes	351-66; 351-86
	Public assistance paid by Department of Health Services for work done in home or workshop	346-33
	Temporary disability benefits	392-29
	Unemployment compensation	383-163
	Unemployment work relief funds to \$60 per month	653-4
	Workers' compensation	386-57
tools of trade	Tools, implements, books, instruments, uniforms, furnishings, fishing boat, nets, motor vehicle, & other property needed for livelihood	651-121(3)

wages	Prisoner's wages held by Department of Public Safety (except for restitution, child support, & other claims)	353-22.5
	Unpaid wages due for services of past 31 days	651-121(6)
wildcard	None	

Idaho

Federal bankruptcy exemptions not available. All law references are to Idaho Code unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	Real property or mobile home to \$100,000; sale proceeds exempt for 6 months (spouses may not double)	55-1003; 55-1113
	Must record homestead exemption for property that is not yet occupied	55-1004
insurance	Annuity contract proceeds to \$1,250 per month	41-1836
	Death or disability benefits	11-604(1)(a); 41-1834
	Fraternal benefit society benefits	41-3218
	Group life insurance benefits	41-1835
	Homeowners' insurance proceeds to amount of homestead exemption	55-1008
	Life insurance proceeds if clause prohibits proceeds from being used to pay beneficiary's creditors	41-1930
	Life insurance proceeds or avails for beneficiary other than the insured	11-604(d); 41-1833
	Medical, surgical, or hospital care benefits & amount in medical savings account	11-603(5)
	Unmatured life insurance contract, other than credit life insurance, owned by debtor	11-605(9)
miscellaneous	Unmatured life insurance contract interest or dividends to \$5,000 owned by debtor or person debtor depends on	11-605(10)
	Alimony, child support	11-604(1)(b)
	Liquor licenses	23-514
pension see also wages	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	ERISA-qualified benefits	55-1011
	Firefighters	72-1422
	Government & private pensions, retirement plans, IRAs, Roth IRAs, Keoghs, etc.	11-604A
	Police officers	50-1517
	Public employees	59-1317
personal property	Appliances, furnishings, books, clothing, pets, musical instruments, 1 firearm, family portraits, & sentimental heirlooms to \$750 per item, \$7,500 total	11-605(1)
	Building materials	45-514
	Burial plot	11-603(1)
	College savings program account	11-604A(4)(b)
	Crops cultivated on maximum of 50 acres, to \$1,000; water rights to 160 inches	11-605(6) and (7)
	Health aids	11-603(2)
	Jewelry to \$1,000	11-605(2)
	Motor vehicle to \$7,000	11-605(3)
	Personal injury recoveries	11-604(1)(c)

personal property (continued)	Proceeds for damaged exempt property for 3 months after proceeds received	11-606
	Wrongful death recoveries	11-604(1)(c)
public benefits	Aid to blind, aged, disabled	56-223
	Federal, state, & local public assistance	11-603(4)
	General assistance	56-223
	Social Security	11-603(3)
	Unemployment compensation	11-603(6)
	Veterans' benefits	11-603(3)
	Workers' compensation	72-802
tools of trade	Arms, uniforms, & accoutrements that peace officer, National Guard, or military personnel is required to keep	11-605(5)
	Implements, books, & tools of trade to \$2,500	11-605(3)
wages	Minimum 75% of earned but unpaid weekly disposable earnings, or 30 times the federal hourly minimum wage, whichever is greater; pension payments; bankruptcy judge may authorize more for low-income debtors	11-207
wildcard	\$800 in any tangible personal property	11-605(11)

Illinois

Federal bankruptcy exemptions not available. All law references are to Illinois Compiled Statutes Annotated unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	Real or personal property including a farm, lot, & buildings, condo, co-op, or mobile home to \$15,000; sale proceeds exempt for 1 year	735-5/12-901; 735-5/12-906
	Spouse or child of deceased owner may claim homestead exemption	735-5/12-902
	Illinois recognizes tenancy by the entirety, with limitations	750-65/22; 765-1005/1c; <i>In re Gillissie</i> , 215 B.R. 370 (Bankr. N.D. Ill. 1998); <i>Great Southern Co. v. Allard</i> , 202 B.R. 938 (N.D. Ill. 1996).
insurance	Fraternal benefit society benefits	215-5/299.1a
	Health or disability benefits	735-5/12-1001(g)(3)
	Homeowners' proceeds if home destroyed, to \$15,000	735-5/12-907
	Life insurance, annuity proceeds, or cash value if beneficiary is insured's child, parent, spouse, or other dependent	215-5/238; 735-5/12-1001(f)
	Life insurance proceeds to a spouse or dependent of debtor to extent needed for support	735-5/12-1001(f),(g)(3)
miscellaneous	Alimony, child support	735-5/12-1001(g)(4)
	Property of business partnership	805-205/25
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	Civil service employees	40-5/11-223

pensions (continued)	County employees	40-5/9-228
	Disabled firefighters; widows & children of firefighters	40-5/22-230
	IRAs and ERISA-qualified benefits	735-5/12-1006
	Firefighters	40-5/4-135; 40-5/6-213
	General Assembly members	40-5/2-154
	House of correction employees	40-5/19-117
	Judges	40-5/18-161
	Municipal employees	40-5/7-217(a); 40-5/8-244
	Park employees	40-5/12-190
	Police officers	40-5/3-144.1; 40-5/5-218
	Public employees	735-5/12-1006
	Public library employees	40-5/19-218
	Sanitation district employees	40-5/13-805
	State employees	40-5/14-147
	State university employees	40-5/15-185
	Teachers	40-5/16-190; 40-5/17-151
personal property	Bible, family pictures, schoolbooks, & clothing	735-5/12-1001(a)
	Health aids	735-5/12-1001(e)
	Illinois College Savings Pool accounts invested more than 1 year before filing if below federal gift tax limit, or 2 years before filing if above	735-5/12-1001(j)
	Motor vehicle to \$2,400	735-5/12-1001(c)
	Personal injury recoveries to \$15,000	735-5/12-1001(h)(4)
	Pre-need cemetery sales funds, care funds, & trust funds	235-5/6-1; 760-100/4; 815-390/16
	Prepaid tuition trust fund	110-979/45(g)
	Proceeds of sold exempt property	735-5/12-1001
public benefits	Wrongful death recoveries	735-5/12-1001(h)(2)
	Aid to aged, blind, disabled; public assistance	305-5/11-3
	Crime victims' compensation	735-5/12-1001(h)(1)
	Restitution payments on account of WWII relocation of Aleuts & Japanese Americans	735-5/12-1001(12)(h)(5)
	Social Security	735-5/12-1001(g)(1)
	Unemployment compensation	735-5/12-1001(g)(1),(3)
	Veterans' benefits	735-5/12-1001(g)(2)
	Workers' compensation	820-305/21
tools of trade	Workers' occupational disease compensation	820-310/21
	Implements, books, & tools of trade to \$1,500	735-5/12-1001(d)
wages	Minimum 85% of earned but unpaid weekly wages or 45 times the federal minimum hourly wage (or state minimum hourly wage, if higher); bankruptcy judge may authorize more for low-income debtors	740-170/4
wildcard	\$4,000 of any personal property (does not include wages)	735-5/12-1001(b)

Indiana

Federal bankruptcy exemptions not available. All law references are to Indiana Statutes Annotated unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead <i>see also</i> <i>wildcard</i>	Real or personal property used as residence to \$17,600	34-55-10-2(c)(1)
	Property held as tenancy by the entirety may be exempt against debts incurred by only one spouse	34-55-10-2(c)(5); 32-17-3-1
insurance	Employer's life insurance policy on employee	27-1-12-17.1
	Fraternal benefit society benefits	27-11-6-3
	Group life insurance policy	27-1-12-29
	Life insurance policy, proceeds, cash value, or avails if beneficiary is insured's spouse or dependent	27-1-12-14
	Life insurance proceeds if clause prohibits proceeds to be used to pay beneficiary's creditors	27-2-5-1
	Mutual life or accident proceeds needed for support	27-8-3-23; <i>In re Stinnet</i> , 321 B.R. 477 (S.D. Ind. 2005)
miscellaneous	Property of business partnership	23-4-1-25
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	Firefighters	36-8-7-22 36-8-8-17
	Police officers	36-8-8-17; 10-12-2-10
	Public employees	5-10-3-8-9
	Public or private retirement benefits & contributions	34-55-10-2(c)(6)
	Sheriffs	36-8-10-19
	State teachers	5-10-4-5-14
personal property	Health aids	34-55-10-2(c)(4)
	Money in medical care savings account	34-55-10-2(c)(7)
	Spendthrift trusts	30-4-3-2
	\$350 of any intangible personal property, except money owed to you	34-55-10-2(c)(3)
public benefits	Crime victims' compensation, unless seeking to discharge the debts for which the victim was compensated	5-2-6.1-38
	Unemployment compensation	22-4-33-3
	Workers' compensation	22-3-2-17
tools of trade	National Guard uniforms, arms, & equipment	10-16-10-3
wages	Minimum 75% of earned but unpaid weekly disposable earnings, or 30 times the federal hourly minimum wage; bankruptcy judge may authorize more for low-income debtors	24-4.5-5-105
wildcard	\$9,350 of any real estate or tangible personal property	34-55-10-2(c)(2)

Iowa

Federal bankruptcy exemptions not available. All law references are to Iowa Code Annotated unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	May record homestead declaration	561.4
	Real property or an apartment to an unlimited value; property cannot exceed ½ acre in town or city, 40 acres elsewhere (spouses may not double)	499A.18; 561.2; 561.16
insurance	Accident, disability, health, illness, or life proceeds or avails	627.6(6)
	Disability or illness benefit	627.6(8)(c)
	Employee group insurance policy or proceeds	509.12
	Fraternal benefit society benefits	512B.18
	Life insurance proceeds if clause prohibits proceeds from being used to pay beneficiary's creditors	508.32
	Life insurance proceeds paid to spouse, child, or other dependent (limited to \$10,000 if acquired within 2 years of filing for bankruptcy)	627.6(6)
	Upon death of insured, up to \$15,000 total proceeds from all matured life, accident, health, or disability policies exempt from beneficiary's debts contracted before insured's death	627.6(6)
miscellaneous	Alimony, child support needed for support	627.6(8)(d)
	Liquor licenses	123.38
pensions <i>see also wages</i>	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	Disabled firefighters, police officers (only payments being received)	410.11
	Federal government pension	627.8
	Firefighters	411.13
	Other pensions, annuities, & contracts fully exempt; however, contributions made within 1 year prior to filing for bankruptcy not exempt to the extent they exceed normal & customary amounts	627.6(8)(e)
	Peace officers	97A.12
	Police officers	411.13
	Public employees	97B.39
	Retirement plans, Keoghs, IRAs, Roth IRAs, ERISA-qualified benefits	627.6(8)(f)
	Bibles, books, portraits, pictures, & paintings to \$1,000 total	627.6(3)
personal property	Burial plot to 1 acre	627.6(4)
	Clothing & its storage containers, household furnishings, appliances, musical instruments, and other personal property to \$7,000	627.6(5)
	Health aids	627.6(7)
	Jewelry to \$2,000	627.6(1)(6)
	Residential security or utility deposit, or advance rent, to \$500	627.6(14)
	Rifle or musket; shotgun	627.6(2)
	One motor vehicle to \$7,000	627.6(9)
	Wedding or engagement rings, limited to \$7,000 if purchased after marriage and within last two years	627.6(1)(a)
	Wrongful death proceeds and awards needed for support of debtor and dependents	627.6(15)

public benefits	Adopted child assistance		627.19
	Aid to dependent children		239B.6
	Any public assistance benefit		627.6(8)(a)
	Social Security		627.6(8)(a)
	Unemployment compensation		627.6(8)(a)
	Veterans' benefits		627.6(8)(b)
	Workers' compensation		627.13
tools of trade	Farming equipment; includes livestock, feed to \$10,000		627.6(11)
	National Guard articles of equipment		29A.41
	Nonfarming equipment to \$10,000		627.6(10)
wages	Expected annual earnings	Amount NOT exempt per year	642.21
	\$0 to \$12,000	\$250	
	\$12,000 to \$16,000	\$400	
	\$16,000 to \$24,000	\$800	
	\$24,000 to \$35,000	\$1,000	
	\$35,000 to \$50,000	\$2,000	
	More than \$50,000	10%	
	Not exempt from spousal or child support		
	Wages or salary of a prisoner		356.29
wildcard	\$1,000 of any personal property, including cash		627.6(14)

Kansas

Federal bankruptcy exemptions not available. All law references are to Kansas Statutes Annotated unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	Real property or mobile home you occupy or intend to occupy to unlimited value; property cannot exceed 1 acre in town or city, 160 acres on farm	60-2301; Constitution 15-9
insurance	Cash value of life insurance; not exempt if obtained within 1 year prior to bankruptcy with fraudulent intent	60-2313(a)(7); 40-414(b)
	Disability & illness benefits	60-2313(a)(1)
	Fraternal life insurance benefits	60-2313(a)(8)
	Life insurance proceeds	40-414(a)
miscellaneous	Alimony, maintenance, & support	60-2312(b)
	Liquor licenses	60-2313(a)(6); 41-326
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	Elected & appointed officials in cities with populations between 120,000 & 200,000	13-14a10
	ERISA-qualified benefits	60-2308(b)
	Federal government pension needed for support & paid within 3 months of filing for bankruptcy (only payments being received)	60-2308(a)
	Firefighters	12-5005(e); 14-10a10
	Judges	20-2618
	Police officers	12-5005(e); 13-14a10

pensions (continued)	Public employees	74-4923; 74-49,105
	State highway patrol officers	74-4978g
	State school employees	72-5526
	Payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for support	60-2312(b)
personal property	Burial plot or crypt	60-2304(d)
	Clothing to last 1 year	60-2304(a)
	Food & fuel to last 1 year	60-2304(a)
	Funeral plan prepayments	60-2313(a)(10); 16-310(d)
	Furnishings & household equipment	60-2304(a)
	Jewelry & articles of adornment to \$1,000	60-2304(b)
	Motor vehicle to \$20,000; if designed or equipped for disabled person, no limit	60-2304(c)
public benefits	Crime victims' compensation	60-2313(a)(7); 74-7313(d)
	General assistance	39-717(c)
	Social Security	60-2312(b)
	Unemployment compensation	60-2313(a)(4); 44-718(c)
	Veterans' benefits	60-2312(b)
	Workers' compensation	60-2313(a)(3); 44-514
tools of trade	Books, documents, furniture, instruments, equipment, breeding stock, seed, grain, & stock to \$7,500 total	60-2304(e)
	National Guard uniforms, arms, & equipment	48-245
wages	Minimum 75% of disposable weekly wages or 30 times the federal minimum hourly wage per week, whichever is greater; bankruptcy judge may authorize more for low-income debtors	60-2310
wildcard	None	

Kentucky

Federal bankruptcy exemptions available. All law references are to Kentucky Revised Statutes unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	Real or personal property used as residence to \$5,000; sale proceeds exempt	427.060; 427.090
insurance	Annuity contract proceeds to \$350 per month	304.14-330
	Cooperative life or casualty insurance benefits	427.110(1)
	Fraternal benefit society benefits	427.110(2)
	Group life insurance proceeds	304.14-320
	Health or disability benefits	304.14-310
	Life insurance policy if beneficiary is a married woman	304.14-340
	Life insurance proceeds if clause prohibits proceeds from being used to pay beneficiary's creditors	304.14-350
	Life insurance proceeds or cash value if beneficiary is someone other than insured	304.14-300
miscellaneous	Alimony, child support needed for support	427.150(1)
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)

pensions (continued)	ERISA-qualified benefits, including IRAs, SEPs, & Keoghs deposited more than 120 days before filing	427.150
	Firefighters	67A.620; 95.878
	Police officers	427.120; 427.125
	State employees	61.690
	Teachers	161.700
	Urban county government employees	67A.350
personal property	Burial plot to \$5,000, in lieu of homestead	427.060
	Clothing, jewelry, articles of adornment, & furnishings to \$3,000 total	427.010(1)
	Health aids	427.010(1)
	Lost earnings payments needed for support	427.150(2)(d)
	Medical expenses paid & reparation benefits received under motor vehicle reparation law	304.39-260
	Motor vehicle to \$2,500	427.010(1)
	Personal injury recoveries to \$7,500 (not to include pain & suffering or pecuniary loss)	427.150(2)(c)
	Prepaid tuition payment fund account	164A.707(3)
public benefits	Wrongful death recoveries for person you depended on, needed for support	427.150(2)(b)
	Aid to blind, aged, disabled; public assistance	205.220(c)
	Crime victims' compensation	427.150(2)(a)
	Unemployment compensation	341.470(4)
	Workers' compensation	342.180
tools of trade	Library, office equipment, instruments, & furnishings of minister, attorney, physician, surgeon, chiropractor, veterinarian, or dentist to \$1,000	427.040
	Motor vehicle of auto mechanic, mechanical, or electrical equipment servicer, minister, attorney, physician, surgeon, chiropractor, veterinarian, or dentist to \$2,500	427.030
	Tools, equipment, livestock, & poultry of farmer to \$3,000	427.010(1)
	Tools of nonfarmer to \$300	427.030
wages	Minimum 75% of disposable weekly earnings or 30 times the federal minimum hourly wage per week, whichever is greater; bankruptcy judge may authorize more for low-income debtors	427.010(2),(3)
wildcard	\$1,000 of any property	427.160

Louisiana

Federal bankruptcy exemptions not available. All law references are to Louisiana Revised Statutes Annotated unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	Property you occupy to \$25,000 (if debt is result of catastrophic or terminal illness or injury, limit is full value of property as of 1 year before filing); cannot exceed 5 acres in city or town, 200 acres elsewhere (spouses may not double)	20:1(A)(1),(2),(3)
	Spouse or child of deceased owner may claim homestead exemption; spouse given home in divorce gets homestead	20:1(B)
insurance	Annuity contract proceeds & avails	22:647
	Fraternal benefit society benefits	22:558
	Group insurance policies or proceeds	22:649
	Health, accident, or disability proceeds or avails	22:646

insurance (continued)	Life insurance proceeds or avails; if policy issued within 9 months of filing, exempt only to \$35,000	22:647
miscellaneous	Property of minor child	13:3881(A)(3); Civil Code Art. 223
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	Assessors	11:1403
	Court clerks	11:1526
	District attorneys	11:1583
	ERISA-qualified benefits, including IRAs, Roth IRAs, & Keoghs, if contributions made over 1 year before filing for bankruptcy	13:3881; 20:33(1)
	Firefighters	11:2263
	Gift or bonus payments from employer to employee or heirs whenever paid	20:33(2)
	Judges	11:1378
	Louisiana University employees	11:952.3
	Municipal employees	11:1735
	Parochial employees	11:1905
	Police officers	11:3513
	School employees	11:1003
	Sheriffs	11:2182
	State employees	11:405
	Teachers	11:704
	Voting registrars	11:2033
personal property	Arms, military accoutrements; bedding; dishes, glassware, utensils, silverware (nonsterling); clothing, family portraits, musical instruments; bedroom, living room, & dining room furniture; poultry, 1 cow, household pets; heating & cooling equipment, refrigerator, freezer, stove, washer & dryer, iron, sewing machine	13:3881(A)(4)
	Cemetery plot, monuments	8:313
	Disaster relief insurance proceeds	13:3881(A)(7)
	Engagement & wedding rings to \$5,000	13:3881(A)(5)
	Motor vehicle to \$7,500	13:3881(A)(7)
	Motor vehicle modified for disability to \$7,500	13:3881(A)(8)
	Spendthrift trusts	9:2004
public benefits	Aid to blind, aged, disabled; public assistance	46:111
	Crime victims' compensation	46:1811
	Earned income tax credit	13:3881 (A)(6)
	Unemployment compensation	23:1693
	Workers' compensation	23:1205
tools of trade	Tools, instruments, books, \$7,500 of equity in a motor vehicle, one firearm to \$500, needed to work	13:3881(A)(2)
wages	Minimum 75% of disposable weekly earnings or 30 times the federal minimum hourly wage per week, whichever is greater; bankruptcy judge may authorize more for low-income debtors	13:3881(A)(1)
wildcard	None	

Maine

Federal bankruptcy exemptions not available. All law references are to Maine Revised Statutes Annotated, in the form title number-section number, unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	Real or personal property (including cooperative) used as residence to \$47,500; if debtor has minor dependents in residence, to \$95,000; if debtor over age 60 or physically or mentally disabled, \$95,000; proceeds of sale exempt for six months	14-4422(1)
insurance	Annuity proceeds to \$450 per month	24-A-2431
	Death benefit for police, fire, or emergency medical personnel who die in the line of duty	25-1612
	Disability or health proceeds, benefits, or avails	14-4422(13)(A),(C); 24-A-2429
	Fraternal benefit society benefits	24-A-4118
	Group health or life policy or proceeds	24-A-2430
	Life, endowment, annuity, or accident policy, proceeds or avails	14-4422(14)(C); 24-A-2428
	Life insurance policy, interest, loan value, or accrued dividends for policy from person you depended on, to \$4,000	14-4422(11)
	Unmatured life insurance policy, except credit insurance policy	14-4422(10)
miscellaneous	Alimony & child support needed for support	14-4422(13)(D)
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	ERISA-qualified benefits	14-4422(13)(E)
	Judges	4-1203
	Legislators	3-703
	State employees	5-17054
personal property	Animals, crops, musical instruments, books, clothing, furnishings, household goods, appliances to \$200 per item	14-4422(3)
	Balance due on repossessed goods; total amount financed can't exceed \$2,000	9-A-5-103
	Burial plot in lieu of homestead exemption	14-4422(1)
	Cooking stove; furnaces & stoves for heat	14-4422(6)(A),(B)
	Food to last 6 months	14-4422(7)(A)
	Fuel not to exceed 10 cords of wood, 5 tons of coal, or 1,000 gal. of heating oil	14-4422(6)(C)
	Health aids	14-4422(12)
	Jewelry to \$750; no limit for one wedding & one engagement ring	14-4422(4)
	Lost earnings payments needed for support	14-4422(14)(E)
	Military clothes, arms, & equipment	37-B-262
	Motor vehicle to \$5,000	14-4422(2)
	Personal injury recoveries to \$12,500	14-4422(14)(D)
	Seeds, fertilizers, & feed to raise & harvest food for 1 season	14-4422(7)(B)
	Tools & equipment to raise & harvest food	14-4422(7)(C)
	Wrongful death recoveries needed for support	14-4422(14)(B)
public benefits	Maintenance under the Rehabilitation Act	26-1411-H
	Crime victims' compensation	14-4422(14)(A)

public benefits (continued)	Federal, state, or local public assistance benefits; earned income and child tax credits	14-4422(13)(A); 22-3180, 22-3766
	Social Security	14-4422(13)(A)
	Unemployment compensation	14-4422(13)(A),(C)
	Veterans' benefits	14-4422(13)(B)
	Workers' compensation	39-A-106
tools of trade	Books, materials, & stock to \$5,000	14-4422(5)
	Commercial fishing boat, 5-ton limit	14-4422(9)
	One of each farm implement (& its maintenance equipment needed to harvest & raise crops)	14-4422(8)
wages	None (use federal nonbankruptcy wage exemption)	
wildcard	Unused portion of exemption in homestead to \$6,000; or unused exemption in animals, crops, musical instruments, books, clothing, furnishings, household goods, appliances, tools of the trade, & personal injury recoveries	14-4422(16)
	\$400 of any property	14-4422(15)

Maryland

Federal bankruptcy exemptions not available. All law references are to Maryland Code of Courts & Judicial Proceedings unless otherwise noted. New Maryland homestead exemption is indexed for inflation by matching the federal homestead amount.

ASSET	EXEMPTION	LAW
homestead	Owner-occupied residential property to \$21,625 (spouses may not double). Property held as tenancy by the entirety is exempt against debts owed by only one spouse	11-504(f); <i>In re Birney</i> , 200 F.3d 225 (4th Cir. 1999)
insurance	Disability or health benefits, including court awards, arbitrations, & settlements	11-504(b)(2)
	Fraternal benefit society benefits	Ins. 8-431; Estates & Trusts 8-115
	Life insurance or annuity contract proceeds or avails if beneficiary is insured's dependent, child, or spouse	Ins. 16-111(a); Estates & Trusts 8-115
	Medical insurance benefits deducted from wages plus medical insurance payments to \$145 per week or 75% of disposable wages	Commercial Law 15-601.1(3)
miscellaneous	Child support	11-504(b)(6)
	Alimony to same extent wages are exempt	11-504(b)(7)
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	ERISA-qualified benefits, including IRAs, Roth IRAs, & Keoghs	11-504(h)(1), (4)
	State employees	State Pers. & Pen. 21-502
personal property	Appliances, furnishings, household goods, books, pets, & clothing to \$1,000 total	11-504(b)(4)
	Burial plot	Bus. Reg. 5-503
	Health aids	11-504(b)(3)
	Perpetual care trust funds	Bus. Reg. 5-603
	Prepaid college trust funds	Educ. 18-1913
	Lost future earnings recoveries	11-504(b)(2)

public benefits	Baltimore Police death benefits	Code of 1957 art. 24, 16-103
	Crime victims' compensation	Crim. Proc. 11-816(b)
	Unemployment compensation	Labor & Employment 8-106
	Workers' compensation	Labor & Employment 9-732
tools of trade	Clothing, books, tools, instruments, & appliances to \$5,000	11-504(b)(1)
wages	Earned but unpaid wages, the greater of 75% or \$145 per week; in Kent, Caroline, Queen Anne's, & Worcester Counties, the greater of 75% or 30 times federal minimum hourly wage	Commercial Law 15-601.1
wildcard	\$6,000 in cash or any property, if claimed within 30 days of attachment or levy	11-504(b)(5)
	An additional \$5,000 in real or personal property	11-504(f)

Massachusetts

Federal bankruptcy exemptions available. All law references are to Massachusetts General Laws Annotated, in the form title number-section number, unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	If statement of homestead is not in title to property, must record homestead declaration before filing bankruptcy	188-2
	Property held as tenancy by the entirety may be exempt against debt for nonnecessity owed by only one spouse	209-1
	Property you occupy or intend to occupy (including mobile home) to \$500,000 (special rules if over 65 or disabled) (co-owners may not double)	188-1; 188-1A
	Spouse or children of deceased owner may claim homestead exemption	188-4
insurance	Disability benefits to \$400 per week	175-110A
	Fraternal benefit society benefits	176-22
	Group annuity policy or proceeds	175-132C
	Group life insurance policy	175-135
	Life insurance or annuity contract proceeds if clause prohibits proceeds from being used to pay beneficiary's creditors	175-119A
	Life insurance policy if beneficiary is a married woman	175-126
	Life or endowment policy, proceeds, or cash value	175-125
	Medical malpractice self-insurance	175F-15
miscellaneous	Property of business partnership	108A-25
pensions <i>see also wages</i>	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	Credit union employees	171-84
	ERISA-qualified benefits, including IRAs & Keoghs to specified limits	235-34A; 246-28
	Private retirement benefits	32-41
	Public employees	32-19
	Savings bank employees	168-41; 168-44
personal property	Bank deposits to \$125	235-34
	Beds & bedding; heating unit; clothing	235-34
	Bibles & books to \$200 total; sewing machine to \$200	235-34

personal property (continued)	Burial plots, tombs, & church pew	235-34
	Cash for fuel, heat, water, or light to \$75 per month	235-34
	Cash to \$200 per month for rent, in lieu of homestead	235-34
	Cooperative association shares to \$100	235-34
	Food or cash for food to \$300	235-34
	Furniture to \$3,000; motor vehicle to \$700	235-34
	Moving expenses for eminent domain	79-6A
	Trust company, bank, or credit union deposits to \$500	246-28A
	2 cows, 12 sheep, 2 swine, 4 tons of hay	235-34
public benefits	Aid to families with dependent children	118-10
	Public assistance	235-34
	Unemployment compensation	151A-36
	Veterans' benefits	115-5
	Workers' compensation	152-47
tools of trade	Arms, accoutrements, & uniforms required	235-34
	Fishing boats, tackle, & nets to \$500	235-34
	Materials you designed & procured to \$500	235-34
	Tools, implements, & fixtures to \$500 total	235-34
wages	Earned but unpaid wages to \$125 per week	246-28
wildcard	None	

Michigan

Federal bankruptcy exemptions available. All law references are to Michigan Compiled Laws Annotated unless otherwise noted.

Under Michigan law, bankruptcy exemption amounts are adjusted for inflation every three years (starting in 2005) by the Michigan Department of Treasury. These amounts have already been adjusted, so the amounts listed in the statutes are not current. You can find the current amounts at www.michigan.gov/documents/BankruptcyExemptions2005_141050_7.pdf or by searching Google for "Property Debtor in Bankruptcy May Exempt, Inflation Adjusted Amounts."

Some of the exemptions in this table may not be available to you in some bankruptcy courts. Before filing bankruptcy, check with a bankruptcy attorney to find out which exemptions are acceptable in your court. See, "Some courts might not allow 'bankruptcy specific' exemptions," at the beginning of this appendix for more information.

ASSET	EXEMPTION	LAW
homestead	Property held as tenancy by the entirety may be exempt against debts owed by only one spouse	600.5451(1)(o)
	Real property including condo to \$34,450 (\$51,650 if over 65 or disabled); property cannot exceed 1 lot in town, village, city, or 40 acres elsewhere; spouse or children of deceased owner may claim homestead exemption; spouses or unmarried co-owners may not double	600.5451(1)(n); <i>Vinson v. Dakmak</i> , 347 B.R. 620 (E.D. Mich. 2006)
insurance	Disability, mutual life, or health benefits	600.5451(1)(j)
	Employer-sponsored life insurance policy or trust fund	500.2210
	Fraternal benefit society benefits	500.8181
	Life, endowment, or annuity proceeds if clause prohibits proceeds from being used to pay beneficiary's creditors	500.4054
	Life insurance	500.2207
miscellaneous	Property of business partnership	449.25

pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	ERISA-qualified benefits, except contributions within last 120 days	600.5451(1)(m)
	Firefighters, police officers	38.559(6); 38.1683
	IRAs & Roth IRAs, except contributions within last 120 days	600.5451(1)(l))
	Judges	38.2308; 38.1683
	Legislators	38.1057; 38.1683
	Probate judges	38.2308; 38.1683
	Public school employees	38.1346; 38.1683
	State employees	38.40; 38.1683
personal property	Appliances, utensils, books, furniture, & household goods to \$525 each, \$3,450 total	600.5451(1)(c)
	Building & loan association shares to \$1,150 par value, in lieu of homestead	600.5451(1)(k)
	Burial plots, cemeteries	600.5451(1)(a)(vii)
	Church pew, slip, seat for entire family to \$575	600.5451(1)(d)
	Clothing; family pictures	600.5451(1)(a)
	Food & fuel to last family for 6 months	600.5451(1)(b)
	Crops, animals, and feed to \$2,300	600.5451(1)(e)
	1 motor vehicle to \$3,175	600.5451(1)(g)
	Computer & accessories to \$575	600.5451(1)(h)
	Household pets to \$575	600.5451(1)(f)
public benefits	Professionally prescribed health aids	600.5451(a)
	Crime victims' compensation	18.362
	Social welfare benefits	400.63
	Unemployment compensation	421.30
	Veterans' benefits for Korean War veterans	35.977
	Veterans' benefits for Vietnam veterans	35.1027
	Veterans' benefits for WWII veterans	35.926
tools of trade	Workers' compensation	418.821
	Arms & accoutrements required	600.6023(1)(a)
	Tools, implements, materials, stock, apparatus, or other things needed to carry on occupation to \$2,300 total	600.5451(1)(i)
wages	Head of household may keep 60% of earned but unpaid wages (no less than \$15/week), plus \$2/week per nonspouse dependent; if not head of household may keep 40% (no less than \$10/week)	600.5311
wildcard	None	

Minnesota

Federal bankruptcy exemptions available. All law references are to Minnesota Statutes Annotated, unless otherwise noted.

Note: Section 550.37(4)(a) requires certain exemptions to be adjusted for inflation on July 1 of even-numbered years; this table includes all changes made through July 1, 2008. Exemptions are published on or before the May 1 issue of the Minnesota State Register, www.comm.media.state.mn.us/bookstore/stateregister.asp, or call the Minnesota Dept. of Commerce at 651-296-7977.

ASSET	EXEMPTION	LAW
homestead	Home & land on which it is situated to \$360,000; if homestead is used for agricultural purposes, \$900,000; cannot exceed ½ acre in city, 160 acres elsewhere (spouses may not double)	510.01; 510.02
	Manufactured home to an unlimited value	550.37 subd. 12
insurance	Accident or disability proceeds	550.39
	Fraternal benefit society benefits	64B.18
	Life insurance proceeds to \$44,000 if beneficiary is spouse or child of insured, plus \$11,000 per dependent	550.37 subd. 10
	Police, fire, or beneficiary association benefits	550.37 subd. 11
	Unmatured life insurance contract dividends, interest, or loan value to \$8,800 if insured is debtor or person debtor depends on	550.37 subd. 23
miscellaneous	Earnings of minor child	550.37 subd. 15
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	ERISA-qualified benefits if needed for support, up to \$66,000 in present value	550.37 subd. 24
	IRAs or Roth IRAs needed for support, up to \$66,000 in present value	550.37 subd. 24
	Public employees	353.15; 356.401
	State employees	352.965 subd. 8; 356.401
	State troopers	352B.071; 356.401
personal property	Appliances, furniture, jewelry, radio, phonographs, & TV to \$9,900 total	550.37 subd. 4(b)
	Bible & books	550.37 subd. 2
	Burial plot; church pew or seat	550.37 subd. 3
	Clothing, one watch, food, & utensils for family	550.37 subd. 4(a)
	Motor vehicle to \$4,400 (up to \$44,000 if vehicle has been modified for disability)	550.37 subd. 12(a)
	Personal injury recoveries	550.37 subd. 22
	Proceeds for damaged exempt property	550.37 subds. 9, 16
	Wedding rings to \$2,695	550.37 subd. 4(c)
public benefits	Wrongful death recoveries	550.37 subd. 22
	Crime victims' compensation	611A.60
	Public benefits	550.37 subd. 14
	Unemployment compensation	268.192 subd. 2
	Veterans' benefits	550.38
tools of trade	Workers' compensation	176.175
	Farm machines, implements, livestock, produce, & crops	550.37 subd. 5
	Teaching materials of college, university, public school, or public institution teacher	550.37 subd. 8
total (except teaching materials) can't exceed \$13,000	Tools, machines, instruments, stock in trade, furniture, & library to \$11,000 total	550.37 subd. 6
wages	Minimum 75% of weekly disposable earnings or 40 times federal minimum hourly wage, whichever is greater	571.922
	Wages deposited into bank accounts for 20 days after depositing	550.37 subd. 13

wages (continued)	Wages paid within 6 months of returning to work after receiving welfare or after incarceration; includes earnings deposited in a financial institution in the last 60 days	550.37 subd. 14
wildcard	None	

Note: In cases of suspected fraud, the Minnesota constitution permits courts to cap exemptions that would otherwise be unlimited. (*In re Tveten*, 402 N.W.2d 551 (Minn. 1987); *In re Medill*, 119 B.R. 685 (Bankr. D. Minn. 1990); *In re Sholdan*, 217 F.3d 1006 (8th Cir. 2000).)

Mississippi

Federal bankruptcy exemptions not available. All law references are to Mississippi Code unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	May file homestead declaration	85-3-27; 85-3-31
	Mobile home does not qualify as homestead unless you own land on which it is located (see <i>personal property</i>)	<i>In re Cobbins</i> , 234 B.R. 882 (S.D. Miss. 1999)
	Property you own & occupy to \$75,000; if over 60 & married or widowed may claim a former residence; property cannot exceed 160 acres; sale proceeds exempt	85-3-1(b)(i); 85-3-21; 85-3-23
insurance	Disability benefits	85-3-1(b)(ii)
	Fraternal benefit society benefits	83-29-39
	Homeowners' insurance proceeds to \$75,000	85-3-23
	Life insurance proceeds if clause prohibits proceeds from being used to pay beneficiary's creditors	83-7-5; 85-3-11
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	ERISA-qualified benefits, IRAs, Keoghs deposited over 1 year before filing bankruptcy	85-3-1(e)
	Firefighters (includes death benefits)	21-29-257; 45-2-1
	Highway patrol officers	25-13-31
	Law enforcement officers' death benefits	45-2-1
	Police officers (includes death benefits)	21-29-257; 45-2-1
	Private retirement benefits to extent tax-deferred	71-1-43
	Public employees retirement & disability benefits	25-11-129
	State employees	25-14-5
	Teachers	25-11-201(1)(d)
	Volunteer firefighters' death benefits	45-2-1
personal property	Mobile home to \$30,000	85-3-1(d)
	Personal injury judgments to \$10,000	85-3-17
	Sale or insurance proceeds for exempt property	85-3-1(b)(i)
	State health savings accounts	85-3-1(g)
	Tangible personal property to \$10,000: any items worth less than \$200 each; furniture, dishes, kitchenware, household goods, appliances, 1 radio, 1 TV, 1 firearm, 1 lawnmower, clothing, wedding rings, motor vehicles, tools of the trade, books, crops, health aids, domestic animals (does not include works of art, antiques, jewelry, or electronic entertainment equipment)	85-3-1(a)
	Tax-qualified § 529 education savings plans, including those under the Mississippi Prepaid Affordable College Tuition Program	85-3-1(f)

public benefits	Assistance to aged	43-9-19
	Assistance to blind	43-3-71
	Assistance to disabled	43-29-15
	Crime victims' compensation	99-41-23(7)
	Federal income tax refund to \$5,000; earned income tax credit to \$5,000; state tax refunds to \$5,000	85-3-1(h); (i); (j); (k)
	Social Security	25-11-129
	Unemployment compensation	71-5-539
	Workers' compensation	71-3-43
tools of trade	<i>See personal property</i>	
wages	Earned but unpaid wages owed for 30 days; after 30 days, minimum 75% of earned but unpaid weekly disposable earnings or 30 times the federal hourly minimum wage, whichever is greater; bankruptcy judge may authorize more for low-income debtors	85-3-4
wildcard	\$50,000 of any property, including deposits of money, available to Mississippi resident who is at least 70 years old; <i>also see personal property</i>	85-3-1(h)

Missouri

Federal bankruptcy exemptions not available. All law references are to Annotated Missouri Statutes unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	Property held as tenancy by the entirety may be exempt against debts owed by only one spouse	<i>In re Eads</i> , 271 B.R. 371 (Bankr. W.D. Mo. 2002)
	Real property to \$15,000 or mobile home to \$5,000 (joint owners may not double)	513.430(6); 513.475 <i>In re Smith</i> , 254 B.R. 751 (Bankr. W.D. Mo. 2000)
insurance	Assessment plan or life insurance proceeds	377.090
	Disability or illness benefits	513.430(10)(c)
	Fraternal benefit society benefits to \$5,000, bought over 6 months before filing	513.430(8)
	Life insurance dividends, loan value, or interest to \$150,000, bought over 6 months before filing	513.430(8)
	Stipulated insurance premiums	377.330
	Unmatured life insurance policy	513.430(7)
miscellaneous	Alimony, child support to \$750 per month	513.430(10)(d)
	Property of business partnership	358.250
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	Employee benefit spendthrift trust	456.014
	Employees of cities with 100,000 or more people	71.207
	ERISA-qualified benefits, IRAs, Roth IRAs, & other retirement accounts needed for support	513.430(10)(e), (f)
	Firefighters	87.090; 87.365; 87.485
	Highway & transportation employees	104.250

pensions (continued)	Police department employees	86.190; 86.353; 86.1430
	Public officers & employees	70.695; 70.755
	State employees	104.540
	Teachers	169.090
personal property	Appliances, household goods, furnishings, clothing, books, crops, animals, & musical instruments to \$3,000 total	513.430(1)
	Burial grounds to 1 acre or \$100	214.190
	Health aids	513.430(9)
	Motor vehicle to \$3,000	513.430(5)
	Wedding ring to \$1,500 & other jewelry to \$500	513.430(2)
	Wrongful death recoveries for person you depended on	513.430(11)
public benefits	Crime victim's compensation	595.025
	Public assistance	513.430(10)(a)
	Social Security	513.430(10)(a)
	Unemployment compensation	288.380(10)(l); 513.430(10)(c)
	Veterans' benefits	513.430(10)(b)
	Workers' compensation	287.260
tools of trade	Implements, books, & tools of trade to \$3,000	513.430(4)
wages	Minimum 75% of weekly earnings (90% of weekly earnings for head of family), or 30 times the federal minimum hourly wage, whichever is more; bankruptcy judge may authorize more for low-income debtors	525.030
	Wages of servant or common laborer to \$90	513.470
wildcard	\$1,250 of any property if head of family, else \$600; head of family may claim additional \$350 per child	513.430(3); 513.440

Montana

Federal bankruptcy exemptions not available. All law references are to Montana Code Annotated unless otherwise noted.

Some of the exemptions in this table may not be available to you in some bankruptcy courts. Before filing bankruptcy, check with a bankruptcy attorney to find out which exemptions are acceptable in your court. See, "Some courts might not allow 'bankruptcy specific' exemptions," at the beginning of this appendix for more information.

ASSET	EXEMPTION	LAW
homestead	Must record homestead declaration before filing for bankruptcy	70-32-105
	Real property or mobile home you occupy to \$250,000; sale, condemnation, or insurance proceeds exempt for 18 months	70-32-104; 70-32-201; 70-32-213
insurance	Annuity contract proceeds to \$350 per month	33-15-514
	Disability or illness proceeds, avails, or benefits	25-13-608(1)(d); 33-15-513
	Fraternal benefit society benefits	33-7-522
	Group life insurance policy or proceeds	33-15-512
	Hail insurance benefits	80-2-245
	Life insurance proceeds if clause prohibits proceeds from being used to pay beneficiary's creditors	33-20-120
	Medical, surgical, or hospital care benefits	25-13-608(1)(f)
	Unmatured life insurance contracts	25-13-608(1)(k)
miscellaneous	Alimony, child support	25-13-608(1)(g)

pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	IRAs & ERISA-qualified benefits deposited over 1 year before filing bankruptcy or up to 15% of debtor's gross annual income	31-2-106
	Firefighters	19-18-612(1)
	IRA & Roth IRA contributions & earnings made before judgment filed	25-13-608(1)(e)
	Police officers	19-19-504(1)
	Public employees	19-2-1004; 25-13-608(i)
	Teachers	19-20-706(2); 25-13-608(j)
	University system employees	19-21-212
personal property	Appliances, household furnishings, goods, animals with feed, crops, musical instruments, books, firearms, sporting goods, clothing, & jewelry to \$600 per item, \$4,500 total	25-13-609(1)
	Burial plot	25-13-608(1)(h)
	Cooperative association shares to \$500 value	35-15-404
	Health aids	25-13-608(1)(a)
	Motor vehicle to \$2,500	25-13-609(2)
	Proceeds from sale or for damage or loss of exempt property for 6 months after received	25-13-610
public benefits	Aid to aged, disabled needy persons	53-2-607
	Crime victims' compensation	53-9-129
	Local public assistance	25-13-608(1)(b)
	Silicosis benefits	39-73-110
	Social Security	25-13-608(1)(b)
	Subsidized adoption payments to needy persons	53-2-607
	Unemployment compensation	31-2-106(2); 39-51-3105
	Veterans' benefits	25-13-608(1)(c)
	Vocational rehabilitation to blind needy persons	53-2-607
tools of trade	Workers' compensation	39-71-743
	Implements, books, & tools of trade to \$3,000	25-13-609(3)
wages	Uniforms, arms, & accoutrements needed to carry out government functions	25-13-613(b)
	Minimum 75% of earned but unpaid weekly disposable earnings, or 30 times the federal hourly minimum wage, whichever is greater; bankruptcy judge may authorize more for low-income debtors	25-13-614
wildcard	None	

Nebraska

Federal bankruptcy exemptions not available. All law references are to Revised Statutes of Nebraska unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	\$60,000 for head of family or an unmarried person age 65 or older; cannot exceed 2 lots in city or village, 160 acres elsewhere; sale proceeds exempt 6 months after sale (spouses may not double)	40-101; 40-111; 40-113
	May record homestead declaration	40-105

insurance	Fraternal benefit society benefits to \$100,000 loan value unless beneficiary convicted of a crime related to benefits	44-1089
	Life insurance proceeds and avails to \$100,000	44-371
pensions <i>see also wages</i>	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	County employees	23-2322
	Deferred compensation of public employees	48-1401
	ERISA-qualified benefits including IRAs & Roth IRAs needed for support	25-1563.01
	Military disability benefits	25-1559
	School employees	79-948
	State employees	84-1324
personal property	Burial plot	12-517
	Clothing	25-1556(2)
	Crypts, lots, tombs, niches, vaults	12-605
	Furniture, household goods & appliances, household electronics, personal computers, books, & musical instruments to \$1,500	25-1556(3)
	Health aids	25-1556(5)
	Medical or health savings accounts to \$25,000	8-1, 131(2)(b)
	Perpetual care funds	12-511
	Personal injury recoveries	25-1563.02
public benefits	Personal possessions	25-1556
	Aid to disabled, blind, aged; public assistance	68-1013
	General assistance to poor persons	68-148
	Unemployment compensation	48-647
	Workers' compensation	48-149
tools of trade	Equipment or tools including a vehicle used in or for commuting to principal place of business to \$2,400 (husband & wife may double)	25-1556(4); <i>In re Keller</i> , 50 B.R. 23 (D. Neb. 1985)
wages	Minimum 85% of earned but unpaid weekly disposable earnings or pension payments for head of family; minimum 75% of earned but unpaid weekly disposable earnings or 30 times the federal hourly minimum wage, whichever is greater, for all others; bankruptcy judge may authorize more for low-income debtors	25-1558
wildcard	\$2,500 of any personal property except wages, in lieu of homestead	25-1552

Nevada

Federal bankruptcy exemptions not available. All law references are to Nevada Revised Statutes Annotated unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	Must record homestead declaration before filing for bankruptcy	115.020
	Real property or mobile home to \$550,000 Spouses may not double	115.010; 21.090(1)(m)
insurance	Annuity contract proceeds to \$350 per month	687B.290
	Fraternal benefit society benefits	695A.220
	Group life or health policy or proceeds	687B.280
	Health proceeds or avails	687B.270

insurance (continued)	Life insurance policy or proceeds if annual premiums not over \$1,000	21.090(1)(k); <i>In re Bower</i> , 234 B.R. 109 (Nev. 1999)
	Life insurance proceeds if you're not the insured	687B.260
miscellaneous	Alimony & child support	21.090(1)(s)
	Property of some business partnerships	87.250
	Security deposits for a rental residence, except landlord may enforce terms of lease or rental agreement	21.090(1)(n)
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	ERISA-qualified benefits, deferred compensation, SEP IRA, Roth IRA, or IRA to \$500,000	21.090(1)(r)
	Public employees	286.670
personal property	Appliances, household goods, furniture, home & yard equipment to \$12,000 total	21.090(1)(b)
	Books, works of art, musical instruments, & jewelry to \$5,000	21.090(1)(a)
	Burial plot purchase money held in trust	689.700
	Funeral service contract money held in trust	689.700
	Health aids	21.090(1)(q)
	Interests in qualifying trusts	21.090(1)(cc)
	Keepsakes & pictures	21.090(1)(a)
	Metal-bearing ores, geological specimens, art curiosities, or paleontological remains; must be arranged, classified, cataloged, & numbered in reference books	21.100
	Mortgage impound accounts	645B.180
	Motor vehicle to \$15,000; no limit on vehicle equipped for disabled person	21.090(1)(f),(o)
	1 gun	21.090(1)(i)
	Personal injury compensation to \$16,500	21.090(1)(u)
	Restitution received for criminal act	21.090(1)(x)
	Stock in certain closely held corporations	21.090(1)(bb)
	Tax refunds derived from the earned income credit	21.090(1)(aa)
	Wrongful death awards to survivors	21.090(1)(v)
public benefits	Aid to blind, aged, disabled; public assistance	422.291
	Crime victim's compensation	21.090
	Industrial insurance (workers' compensation)	616C.205
	Public assistance for children	432.036
	Social Security retirement, disability, SSI, survivor benefits	21.090(1)(y)
	Unemployment compensation	612.710
	Vocational rehabilitation benefits	615.270
tools of trade	Arms, uniforms, & accoutrements you're required to keep	21.090(1)(j)
	Cabin or dwelling of miner or prospector; mining claim, cars, implements, & appliances to \$4,500 total (for working claim only)	21.090(1)(e)
	Farm trucks, stock, tools, equipment, & seed to \$4,500	21.090(1)(c)
	Library, equipment, supplies, tools, inventory, & materials to \$10,000	21.090(1)(d)
wages	Minimum 75% of disposable weekly earnings or 30 times the federal minimum hourly wage per week, whichever is more; bankruptcy judge may authorize more for low-income debtors	21.090(1)(g)
wildcard	\$1,000 of any personal property	21.090(1)(z)

New Hampshire

Federal bankruptcy exemptions available. All law references are to New Hampshire Revised Statutes Annotated unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	Real property or manufactured housing (& the land it's on if you own it) to \$100,000	480:1
insurance	Firefighters' aid insurance	402:69
	Fraternal benefit society benefits	418:17
	Homeowners' insurance proceeds to \$5,000	512:21(VIII)
miscellaneous	Jury, witness fees	512:21(VI)
	Property of business partnership	304-A:25
	Wages of minor child	512:21(III)
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	ERISA-qualified retirement accounts including IRAs & Roth IRAs	512:2 (XIX)
	Federally created pension (only benefits building up)	512:21(IV)
	Firefighters	102:23
	Police officers	103:18
	Public employees	100-A:26
personal property	Beds, bedding, & cooking utensils	511:2(II)
	Bibles & books to \$800	511:2(VIII)
	Burial plot, lot	511:2(XIV)
	Church pew	511:2(XV)
	Clothing	511:2(I)
	Cooking & heating stoves, refrigerator	511:2(IV)
	Domestic fowl to \$300	511:2(XIII)
	Food & fuel to \$400	511:2(VI)
	Furniture to \$3,500	511:2(III)
	Jewelry to \$500	511:2(XVII)
	Motor vehicle to \$4,000	511:2(XVI)
	Proceeds for lost or destroyed exempt property	512:21(VIII)
	Sewing machine	511:2(V)
	1 cow, 6 sheep & their fleece, 4 tons of hay	511:2(XI); (XII)
	1 hog or pig or its meat (if slaughtered)	511:2(X)
public benefits	Aid to blind, aged, disabled; public assistance	167:25
	Unemployment compensation	282-A:159
	Workers' compensation	281-A:52
tools of trade	Tools of your occupation to \$5,000	511:2(IX)
	Uniforms, arms, & equipment of military member	511:2(VII)
	Yoke of oxen or horse needed for farming or teaming	511:2(XII)
wages	50 times the federal minimum hourly wage per week	512:21(II)
	Deposits in any account designated a payroll account.	512:21(XI)
	Earned but unpaid wages of spouse	512:21(III)

wildcard	\$1,000 of any property	511:2(XVIII)
	Unused portion of bibles & books, food & fuel, furniture, jewelry, motor vehicle, & tools of trade exemptions to \$7,000	511:2(XVIII)

New Jersey

Federal bankruptcy exemptions available. All law references are to New Jersey Statutes Annotated unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	None, but survivorship interest of a spouse in property held as tenancy by the entirety is exempt from creditors of a single spouse	<i>Freda v. Commercial Trust Co. of New Jersey</i> , 570 A.2d 409 (N.J. 1990)
insurance	Annuity contract proceeds to \$500 per month	17B:24-7
	Disability benefits	17:18-12
	Disability, death, medical, or hospital benefits for civil defense workers	App. A:9-57.6
	Disability or death benefits for military member	38A:4-8
	Group life or health policy or proceeds	17B:24-9
	Health or disability benefits	17:18-12; 17B:24-8
	Life insurance proceeds if clause prohibits proceeds from being used to pay beneficiary's creditors	17B:24-10
	Life insurance proceeds or avails if you're not the insured	17B:24-6b
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	Alcohol beverage control officers	43:8A-20
	City boards of health employees	43:18-12
	Civil defense workers	App. A:9-57.6
	County employees	43:10-57; 43:10-105
	ERISA-qualified benefits for city employees	43:13-9
	Firefighters, police officers, traffic officers	43:16-7; 43:16A-17
	IRAs	<i>In re Yuhas</i> , 104 F.3d 612 (3d Cir. 1997)
	Judges	43:6A-41
	Municipal employees	43:13-44
	Prison employees	43:7-13
	Public employees	43:15A-53
	School district employees	18A:66-116
	State police	53:5A-45
	Street & water department employees	43:19-17
	Teachers	18A:66-51
	Trust containing personal property created pursuant to federal tax law, including 401(k) plans, IRAs, Roth IRAs, & higher education (529) savings plans	25:2-1; <i>In re Yuhas</i> , 104 F.3d 612 (3d Cir. 1997)
personal property	Burial plots	45:27-21
	Clothing	2A:17-19
	Furniture & household goods to \$1,000	2A:26-4
	Personal property & possessions of any kind, stock or interest in corporations to \$1,000 total	2A:17-19

public benefits	Old age, permanent disability assistance	44:7-35
	Unemployment compensation	43:21-53
	Workers' compensation	34:15-29
tools of trade	None	
wages	90% of earned but unpaid wages if annual income is less than 250% of federal poverty level; 75% if annual income is higher	2A:17-56
	Wages or allowances received by military personnel	38A:4-8
wildcard	None	

New Mexico

Federal bankruptcy exemptions available. All law references are to New Mexico Statutes Annotated unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	\$60,000	42-10-9
insurance	Benevolent association benefits to \$5,000	42-10-4
	Fraternal benefit society benefits	59A-44-18
	Life, accident, health, or annuity benefits, withdrawal or cash value, if beneficiary is a New Mexico resident	42-10-3
	Life insurance proceeds	42-10-5
miscellaneous	Ownership interest in unincorporated association	53-10-2
	Property of business partnership	54-1A-501
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	Pension or retirement benefits	42-10-1; 42-10-2
	Public school employees	22-11-42A
personal property	Books & furniture	42-10-1; 42-10-2
	Building materials	48-2-15
	Clothing	42-10-1; 42-10-2
	Cooperative association shares, minimum amount needed to be member	53-4-28
	Health aids	42-10-1; 42-10-2
	Jewelry to \$2,500	42-10-1; 42-10-2
	Materials, tools, & machinery to dig, drill, complete, operate, or repair oil line, gas well, or pipeline	70-4-12
	Motor vehicle to \$4,000	42-10-1; 42-10-2
public benefits	Crime victims' compensation	31-22-15
	General assistance	27-2-21
	Occupational disease disablement benefits	52-3-37
	Unemployment compensation	51-1-37
	Workers' compensation	52-1-52
tools of trade	\$1,500	42-10-1; 42-10-2
wages	Minimum 75% of disposable earnings or 40 times the federal hourly minimum wage, whichever is more; bankruptcy judge may authorize more for low-income debtors	35-12-7

wildcard	\$500 of any personal property	42-10-1
	\$5,000 of any real or personal property, in lieu of homestead	42-10-10

New York

Federal bankruptcy exemptions are available. All references are to Consolidated Laws of New York unless otherwise noted; Civil Practice Law & Rules are abbreviated C.P.L.R.

Some of the exemptions in this table may not be available to you in some bankruptcy courts. Before filing bankruptcy, check with a bankruptcy attorney to find out which exemptions are acceptable in your court. See, “Some courts might not allow ‘bankruptcy specific’ exemptions,” at the beginning of this appendix for more information.

ASSET	EXEMPTION	LAW
homestead	Real property including co-op, condo, or mobile home, to \$75,000, \$125,000, or \$250,000, depending on the county	C.P.L.R. 5206(a); <i>In re Pearl</i> , 723 F.2d 193 (2nd Cir. 1983)
	Annuity contract benefits due the debtor, if debtor paid for the contract; \$5,000 limit if purchased within 6 months prior to filing & not tax-deferred	Ins. 3212(d); Debt. & Cred. 283(1)
	Disability or illness benefits to \$400 per month	Ins. 3212(c)
	Life insurance proceeds & avails if the beneficiary is not the debtor, or if debtor's spouse has taken out policy	Ins. 3212(b)
insurance	Life insurance proceeds left at death with the insurance company, if clause prohibits proceeds from being used to pay beneficiary's creditors	Est. Powers & Trusts 7-1.5(a)(2)
	Alimony, child support	C.P.L.R. 5205 (d)(3); Debt. & Cred. 282(2)(d)
	Property of business partnership	Partnership 51
	Property of business partnership	Partnership 51
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	ERISA-qualified benefits, IRAs, Roth IRAs, & Keoghs, & income needed for support	C.P.L.R. 5205(c); Debt. & Cred. 282(2)(e)
	Public retirement benefits	Ins. 4607
	State employees	Ret. & Soc. Sec. 10
	Teachers	Educ. 524
	Village police officers	Unconsolidated 5711-o
	Volunteer ambulance workers' benefits	Vol. Amb. Wkr. Ben. 23
	Volunteer firefighters' benefits	Vol. Firefighter Ben. 23
	Volunteer firefighters' benefits	Vol. Firefighter Ben. 23
personal property	Religious texts, schoolbooks, other books to \$500; pictures; clothing; church pew or seat; sewing machine, refrigerator, TV, radio; furniture, cooking utensils & tableware, dishes; food to last 120 days; stoves with fuel to last 120 days; domestic animal with food to last 120 days, to \$1,000; wedding ring; watch, jewelry, art to \$1,000; exemptions may not exceed \$10,000 total (including tools of trade & limited annuity)	C.P.L.R. 5205(a)(1)-(6); Debt. & Cred. 283(1)
	Burial plot without structure to ¼ acre	C.P.L.R. 5206(f)
	Cash (including savings bonds, tax refunds, bank & credit union deposits) to \$5,000, or to \$10,000 after exemptions for personal property taken, whichever amount is less (for debtors who do not claim homestead)	Debt. & Cred. 283(2)
	College tuition savings program trust fund	C.P.L.R. 5205(j)

personal property (continued)	Electronic deposits of exempt property into bank account in last 45 days	C.P.L.R. 5205(l)(1)
	Health aids, including service animals with food	C.P.L.R. 5205(h)
	Lost future earnings recoveries needed for support	Debt. & Cred. 282(3)(iv)
	Motor vehicle to \$4,000; \$10,000 if equipped for disabled person (except if municipality is creditor)	Debt. & Cred. 282(1); <i>In re Miller</i> , 167 B.R. 782 (S.D. N.Y. 1994)
	Personal injury recoveries up to 1 year after receiving	Debt. & Cred. 282(3)(iii)
	Recovery for injury to exempt property up to 1 year after receiving	C.P.L.R. 5205(b)
	Savings & loan savings to \$600	Banking 407
	Security deposit to landlord, utility company	C.P.L.R. 5205(g)
	Spendthrift trust fund principal, 90% of income if not created by debtor	C.P.L.R. 5205(c),(d)
	Wrongful death recoveries for person you depended on	Debt. & Cred. 282(3)(ii)
public benefits	Aid to blind, aged, disabled	Debt. & Cred. 282(2)(c)
	Crime victims' compensation	Debt. & Cred. 282(3)(i)
	Home relief, local public assistance	Debt. & Cred. 282(2)(a)
	Public assistance	Soc. Serv. 137
	Social Security	Debt. & Cred. 282(2)(a)
	Unemployment compensation	Debt. & Cred. 282(2)(a)
	Veterans' benefits	Debt. & Cred. 282(2)(b)
	Workers' compensation	Debt. & Cred. 282(2)(c); Work. Comp. 33, 218
tools of trade	Farm machinery, team, & food for 60 days; professional furniture, books, & instruments to \$3,000 total	C.P.L.R. 5205(a),(b)
	Uniforms, medal, emblem, equipment, horse, arms, & sword of member of military	C.P.L.R. 5205(e)
wages	90% of earned but unpaid wages received within 60 days before & anytime after filing	C.P.L.R. 5205(d)
	90% of earnings from dairy farmer's sales to milk dealers	C.P.L.R. 5205(f)
	100% of pay of noncommissioned officer, private, or musician in U.S. or N.Y. state armed forces	C.P.L.R. 5205(e)
wildcard	None	

North Carolina

Federal bankruptcy exemptions not available. All law references are to General Statutes of North Carolina unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	Property held as tenancy by the entirety may be exempt against debts owed by only one spouse	<i>In re Chandler</i> , 148 B.R. 13 (E.D. N.C. 1992)
	Real or personal property, including co-op, used as residence to \$35,000; \$60,000 if 65 or older, property owned with spouse as tenants by the entirety or joint tenants with right of survivorship, and spouse has died; up to \$5,000 of unused portion of homestead may be applied to any property	1C-1601(a)(1),(2)
insurance	Employee group life policy or proceeds	58-58-165
	Fraternal benefit society benefits	58-24-85
	Life insurance on spouse or children	1C-1601(a)(6); Const. Art. X § 5

miscellaneous	Alimony, support, separate maintenance, and child support necessary for support of debtor and dependents	1C-1601(a)(12)
	Property of business partnership	59-55
	Support received by a surviving spouse for 1 year, up to \$10,000	30-15
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	Firefighters & rescue squad workers	58-86-90
	IRAs & Roth IRAs	1C-1601(a)(9)
	Law enforcement officers	143-166.30(g)
	Legislators	120-4.29
	Municipal, city, & county employees	128-31
	Retirement benefits from another state to extent exempt in that state	1C-1601(a)(11)
	Teachers & state employees	135-9; 135-95
	Animals, crops, musical instruments, books, clothing, appliances, household goods & furnishings to \$5,000 total; may add \$1,000 per dependent, up to \$4,000 total additional (all property must have been purchased at least 90 days before filing)	1C-1601(a)(4),(d)
personal property	Burial plot to \$18,500, in lieu of homestead	1C-1601(a)(1)
	College savings account established under 26 U.S.C. § 529 to \$25,000, excluding certain contributions within prior year	1C-1601(a)(10)
	Health aids	1C-1601(a)(7)
	Motor vehicle to \$3,500	1C-1601(a)(3)
	Personal injury & wrongful death recoveries for person you depended on	1C-1601(a)(8)
public benefits	Aid to blind	111-18
	Crime victims' compensation	15B-17
	Public adult assistance under work first program	108A-36
	Unemployment compensation	96-17
	Workers' compensation	97-21
tools of trade	Implements, books, & tools of trade to \$2,000	1C-1601(a)(5)
wages	Earned but unpaid wages received 60 days before filing for bankruptcy, needed for support	1-362
wildcard	\$5,000 of unused homestead or burial exemption	1C-1601(a)(2)
	\$500 of any personal property	Constitution Art. X § 1

North Dakota

Federal bankruptcy exemptions not available. All law references are to North Dakota Century Code unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	Real property, house trailer, or mobile home to \$100,000 (spouses may not double)	28-22-02(10); 47-18-01
insurance	Fraternal benefit society benefits Any unmaturred life insurance contract, other than credit life insurance	26.1-15.1-18; 26.1-33-40; 28-22-03.1(4)
	Life insurance proceeds payable to deceased's estate, not to a specific beneficiary	26.1-33-40
	Life insurance surrender value to \$8,000 per policy, if beneficiary is insured's dependent & policy was owned over 1 year before filing for bankruptcy; limit does not apply if more needed for support	28-22-03.1(5)

miscellaneous	Child support payments	14-09-09.31; 28-22-03.1(8)(d)
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	Disabled veterans' benefits, except military retirement pay	28-22-03.1(4)(d)
	ERISA-qualified benefits, IRAs, Roth IRAs, & Keoghs to \$100,000 per plan; no limit if more needed for support; total of all accounts cannot exceed \$200,000	28-22-03.1(7)
	Public employees deferred compensation	54-52.2-06
	Public employees pensions	28-22-19(1)
	One Bible or other religious text; schoolbooks; other books	28-22-02(4)
personal property	Burial plots, church pew	28-22-02(2),(3)
	Wearing apparel to \$5,000 and all clothing & family pictures	28-22-02(1),(5)
	Crops or grain raised by debtor on 160 acres where debtor resides	28-22-02(8)
personal property (continued)	Food & fuel to last 1 year	28-22-02(6)
	Health aids	28-22-03.1(6)
	Insurance proceeds for exempt property	28-22-02(9)
	One motor vehicle to \$2,950 (or \$32,000 for vehicle that has been modified to accommodate owner's disability)	28-22-03.1(2)
	Personal injury recoveries to \$15,000	28-22-03.1(4)(b)
	Wrongful death recoveries to \$15,000	28-22-03.1(4)(a)
	Head of household not claiming crops or grain may claim \$5,000 of any personal property	28-22-03
	Unmarried with no dependents not claiming crops or grain may claim \$3,750 of any personal property	28-22-05
	Crime victims' compensation	28-22-03.1(4); 28-22-19(2)
public benefits	Old age & survivor insurance program benefits	52-09-22
	Public assistance	28-22-19(3)
	Social Security	28-22-03.1(8)(a)
	Unemployment compensation	52-06-30
	Veteran's disability benefits	28-22-03.1(8)(b)
	Workers' compensation	65-05-29
	Books, tools, & implements of trade to \$1,500	28-22-03.1(3)
tools of trade	Books, tools, & implements of trade to \$1,500	28-22-03.1(3)
wages	Minimum 75% of disposable weekly earnings or 40 times the federal minimum wage, whichever is more; bankruptcy judge may authorize more for low-income debtors	32-09.1-03
wildcard	\$7,500 of any property in lieu of homestead	28-22-03.1(1)

Ohio

Federal bankruptcy exemptions not available. All law references are to Ohio Revised Code unless otherwise noted. Amounts are adjusted for inflation by tracking federal exemption amounts.

Some of the exemptions in this table may not be available to you in some bankruptcy courts. Before filing bankruptcy, check with a bankruptcy attorney to find out which exemptions are acceptable in your court. See, "Some courts might not allow 'bankruptcy specific' exemptions," at the beginning of this appendix for more information.

ASSET	EXEMPTION	LAW
homestead	Property held as tenancy by the entirety may be exempt against debts owed by only one spouse	<i>In re Pernus</i> , 143 B.R. 856 (N.D. Ohio 1992)
	Real or personal property used as residence to \$21,625	2329.66(A)(1)(b)
insurance	Benevolent society benefits to \$5,000	2329.63; 2329.66(A)(6)(a)
	Disability benefits needed for support	2329.66(A)(6)(e); 3923.19
	Fraternal benefit society benefits	2329.66(A)(6)(d); 3921.18
	Group life insurance policy or proceeds	2329.66(A)(6)(c); 3917.05
	Life, endowment, or annuity contract avails for your spouse, child, or dependent	2329.66(A)(6)(b); 3911.10
	Life insurance proceeds for a spouse	3911.12
	Life insurance proceeds if clause prohibits proceeds from being used to pay beneficiary's creditors	3911.14
miscellaneous	Alimony, child support needed for support	2329.66(A)(11)
	Property of business partnership	1775.24; 2329.66(A)(14)
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	ERISA-qualified benefits needed for support	2329.66(A)(10)(b)
	Firefighters, police officers	742.47
	IRAs, Roth IRAs, & Keoghs needed for support	2329.66(A)(10)(c), (a)
	Public employees	145.56
	Public safety officers' death benefit	2329.66(A)(10)(a)
	Public school employees	3309.66
	State highway patrol employees	5505.22
	Volunteer firefighters' dependents	146.13
personal property	Animals, crops, books, musical instruments, appliances, household goods, furnishings, firearms, hunting & fishing equipment to \$525 per item; jewelry to \$1,450 for 1 or more items; \$11,525 total	2329.66(A)(4)(b),(c),(d); <i>In re Szydlowski</i> , 186 B.R. 907 (N.D. Ohio 1995)
	Burial plot	517.09; 2329.66(A)(8)
	Cash, money due within 90 days, tax refund, bank, security, & utility deposits to \$400 total	2329.66(A)(3); <i>In re Szydlowski</i> , 186 B.R. 907 (N.D. Ohio 1995)
	Compensation for lost future earnings needed for support, received during 12 months before filing	2329.66(A)(12)(d)
	Health aids (professionally prescribed)	2329.66(A)(7)
	Motor vehicle to \$3,450	2329.66(A)(2)(b)
	Personal injury recoveries to \$21,625, received during 12 months before filing	2329.66(A)(12)(c)
	Tuition credit or payment	2329.66(A)(16)
	Wrongful death recoveries for person debtor depended on, needed for support, received during 12 months before filing	2329.66(A)(12)(b)
public benefits	Crime victim's compensation, received during 12 months before filing	2329.66(A)(12)(a); 2743.66(D)
	Disability assistance payments	2329.66(A)(9)(f); 5115.07
	Public assistance	2329.66(A)(9)(d); (e); 5107.75; 5108.08

public benefits (continued)	Unemployment compensation	2329.66(A)(9)(c); 4141.32
	Vocational rehabilitation benefits	2329.66(A)(9)(a); 3304.19
	Workers' compensation	2329.66(A)(9)(b); 4123.67
tools of trade	Implements, books, & tools of trade to \$2,175	2329.66(A)(5)
wages	Minimum 75% of disposable weekly earnings or 30 times the federal hourly minimum wage, whichever is higher; bankruptcy judge may authorize more for low-income debtors	2329.66(A)(13)
wildcard	\$1,150 of any property	2329.66(A)(18)

Oklahoma

Federal bankruptcy exemptions not available. All law references are to Oklahoma Statutes Annotated (in the form title number-section number), unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	Real property or manufactured home to unlimited value; property cannot exceed 1 acre in city, town, or village, or 160 acres elsewhere; \$5,000 limit if more than 25% of total sq. ft. area used for business purposes; okay to rent homestead as long as no other residence is acquired	31-1(A)(1); 31-1(A)(2); 31-2
insurance	Annuity benefits & cash value	36-3631.1
	Assessment or mutual benefits	36-2410
	Fraternal benefit society benefits	36-2718.1
	Funeral benefits prepaid & placed in trust	36-6125
	Group life policy or proceeds	36-3632
	Life, health, accident, & mutual benefit insurance proceeds & cash value, if clause prohibits proceeds from being used to pay beneficiary's creditors	36-3631.1
	Limited stock insurance benefits	36-2510
miscellaneous	Alimony, child support	31-1(A)(19)
	Beneficiary's interest in a statutory support trust	6-3010
	Liquor license	37-532
	Property of business partnership	54-1-504
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	County employees	19-959
	Disabled veterans	31-7
	ERISA-qualified benefits, IRAs, Roth IRAs, Education IRAs, & Keoghs	31-1(A)(20), (24)
	Firefighters	11-49-126
	Judges	20-1111
	Law enforcement employees	47-2-303.3
	Police officers	11-50-124
	Public employees	74-923
	Tax-exempt benefits	60-328
	Teachers	70-17-109
personal property	Books, portraits, & pictures	31-1(A)(6)
	Burial plots	31-1(A)(4); 8-7

personal property (continued)	Clothing to \$4,000	31-1(A)(7)
	College savings plan interest	31-1A(24)
	Deposits in an IDA (Individual Development Account)	31-1A(22)
	Federal earned income tax credit	31-1(A)(23)
	Food & seed for growing to last 1 year	31-1(A)(17)
	Guns for household use to \$2,000	31-1A(14)
	Health aids (professionally prescribed)	31-1(A)(9)
	Household & kitchen furniture; personal computer and related equipment	31-1(A)(3)
	Livestock for personal or family use: 5 dairy cows & calves under 6 months; 100 chickens; 20 sheep; 10 hogs; 2 horses, bridles, & saddles; forage & feed to last 1 year	31-1(A)(10),(11), (12),(15),(16),(17)
	Motor vehicle to \$7,500	31-1(A)(13)
	Personal injury & wrongful death recoveries to \$50,000	31-1(A)(21)
	Prepaid funeral benefits	36-6125(H)
	War bond payroll savings account	51-42
	Wedding and anniversary rings to \$3,000	31-1(A)(8)
public benefits	Crime victims' compensation	21-142.13
	Public assistance	56-173
	Social Security	56-173
	Unemployment compensation	40-2-303
	Workers' compensation	85-48
tools of trade	Implements needed to farm homestead; tools, books, & apparatus to \$10,000 total	31-1(A)(5); 31-1(C)
wages	75% of wages earned in 90 days before filing bankruptcy; bankruptcy judge may allow more if you show hardship	12-1171.1; 31-1(A)(18); 31-1.1
wildcard	None	

Oregon

Federal bankruptcy exemptions not available. All law references are to Oregon Revised Statutes unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	Prepaid rent & security deposit for renter's dwelling	<i>In re Casserino</i> , 379 F.3d 1069 (9th Cir. 2004)
	Real property of a soldier or sailor during time of war	408.440
	Real property you occupy or intend to occupy to \$40,000 (\$50,000 for joint owners); property cannot exceed 1 block in town or city or 160 acres elsewhere; sale proceeds exempt 1 year from sale if you intend to purchase another home or use sale proceeds for rent	18.395; 18.402; <i>In re Wynn</i> , 369 B.R. 605 (D. Or. 2007)
	Tenancy by entirety not exempt, but subject to survivorship rights of nondebtor spouse	<i>In re Pletz</i> , 225 B.R. 206 (D. Or. 1997)
insurance	Annuity contract benefits to \$500 per month	743.049
	Fraternal benefit society benefits to \$7,500	748.207; 18.348
	Group life policy or proceeds not payable to insured	743.047
	Health or disability proceeds or avails	743.050
	Life insurance proceeds or cash value if you are not the insured	743.046; 743.047
miscellaneous	Alimony, child support needed for support	18.345(1)(i)
	Liquor licenses	471.292 (1)

pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	ERISA-qualified benefits, including IRAs & SEPs; & payments to \$7,500	18.358; 18.348
	Public officers', employees' pension payments to \$7,500	237.980; 238.445; 18.348(2)
personal property	Bank deposits to \$7,500; cash for sold exempt property	18.348; 18.345(2)
	Books, pictures, & musical instruments to \$600 total	18.345(1)(a)
	Building materials for construction of an improvement	87.075
	Burial plot	65.870
	Clothing, jewelry, & other personal items to \$1,800 total	18.345(1)(b)
	Compensation for lost earnings payments for debtor or someone debtor depended on, to extent needed	18.345(1)(L),(3)
	Domestic animals, poultry, & pets to \$1,000 plus food to last 60 days	18.345(1)(e)
	Federal earned income tax credit	18.345(1)(n)
	Food & fuel to last 60 days if debtor is householder	18.345(1)(f)
	Furniture, household items, utensils, radios, & TVs to \$3,000 total	18.345(1)(f)
	Health aids	18.345(1)(h)
	Higher education savings account to \$7,500	348.863; 18.348(1)
	Motor vehicle to \$3,000	18.345(1)(d),(3)
	Personal injury recoveries to \$10,000	18.345(1)(k),(3)
	Pistol; rifle or shotgun (owned by person over 16) to \$1,000	18.362
public benefits	Aid to blind to \$7,500	411.706; 411.760; 18.348
	Aid to disabled to \$7,500	411.706; 411.760; 18.348
	Civil defense & disaster relief to \$7,500	401.405; 18.348
	Crime victims' compensation	18.345(1)(j)(A),(3); 147.325
	General assistance to \$7,500	411.760; 18.348
	Injured inmates' benefits to \$7,500	655.530; 18.348
	Medical assistance to \$7,500	414.095; 18.348
	Old-age assistance to \$7,500	411.706; 411.760; 18.348
	Unemployment compensation to \$7,500	657.855; 18.348
	Veterans' benefits & proceeds of Veterans loans	407.125; 407.595; 18.348(m)
	Vocational rehabilitation to \$7,500	344.580; 18.348
	Workers' compensation to \$7,500	656.234; 18.348
tools of trade	Tools, library, team with food to last 60 days, to \$3,000	18.345(1)(c),(3)
wages	75% of disposable wages or \$170 per week, whichever is greater; bankruptcy judge may authorize more for low-income debtors	18.385
	Wages withheld in state employee's bond savings accounts	292.070
wildcard	\$400 of any personal property not already covered by existing exemption	18.348(1)(o)

Pennsylvania

Federal bankruptcy exemptions available. All law references are to Pennsylvania Consolidated Statutes Annotated unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	None; however, property held as tenancy by the entirety may be exempt against debts owed by only one spouse	<i>In re Martin</i> , 269 B.R. 119 (M.D. Pa. 2001)
insurance	Accident or disability benefits	42-8124(c)(7)
	Fraternal benefit society benefits	42-8124(c)(1),(8)
	Group life policy or proceeds	42-8124(c)(5)
	Insurance policy or annuity contract payments where insured is the beneficiary, cash value or proceeds to \$100 per month	42-8124(c)(3)
	Life insurance & annuity proceeds if clause prohibits proceeds from being used to pay beneficiary's creditors	42-8214(c)(4)
	Life insurance annuity policy cash value or proceeds if beneficiary is insured's dependent, child or spouse	42-8124(c)(6)
	No-fault automobile insurance proceeds	42-8124(c)(9)
miscellaneous	Property of business partnership	15-8342
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	City employees	53-13445; 53-23572; 53-39383; 42-8124(b)(1)(iv)
	County employees	16-4716
	Municipal employees	53-881.115; 42-8124(b)(1)(vi)
	Police officers	53-764; 53-776; 53-23666; 42-8124(b)(1)(iii)
	Private retirement benefits to extent tax-deferred, if clause prohibits proceeds from being used to pay beneficiary's creditors; exemption limited to deposits of \$15,000 per year made at least 1 year before filing (limit does not apply to rollovers from other exempt funds or accounts)	42-8124(b)(1)(vii), (viii),(ix)
	Public school employees	24-8533; 42-8124(b)(1)(i)
	State employees	71-5953; 42-8124(b)(1)(ii)
personal property	Bibles & schoolbooks	42-8124(a)(2)
	Clothing	42-8124(a)(1)
	Military uniforms & accoutrements	42-8124(a)(4); 51-4103
	Sewing machines	42-8124(a)(3)
public benefits	Crime victims' compensation	18-11.708
	Korean conflict veterans' benefits	51-20098
	Unemployment compensation	42-8124(a)(10); 43-863
	Veterans' benefits	51-20012; 20048; 20098; 20127
	Workers' compensation	42-8124(c)(2)
tools of trade	Seamstress's sewing machine	42-8124(a)(3)
wages	Earned but unpaid wages	42-8127
	Prison inmate's wages	61-3704
	Wages of victims of abuse	42-8127(f)
wildcard	\$300 of any property, including cash, real property, securities, or proceeds from sale of exempt property	42-8123

Rhode Island

Federal bankruptcy exemptions available. All law references are to General Laws of Rhode Island unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	\$300,000 in land & buildings you occupy or intend to occupy as a principal residence (spouses may not double)	9-26-4.1
insurance	Accident or sickness proceeds, avails, or benefits	27-18-24
	Fraternal benefit society benefits	27-25-18
	Life insurance proceeds if clause prohibits proceeds from being used to pay beneficiary's creditors	27-4-12
	Temporary disability insurance	28-41-32
miscellaneous	Earnings of a minor child	9-26-4(9)
	Property of business partnership	7-12-36
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	ERISA-qualified benefits	9-26-4(12)
	Firefighters	9-26-5
	IRAs & Roth IRAs	9-26-4(11)
	Police officers	9-26-5
	Private employees	28-17-4
	State & municipal employees	36-10-34
personal property	Beds, bedding, furniture, household goods, & supplies, to \$9,600 total (spouses may not double)	9-26-4(3); <i>In re Petrozella</i> , 247 B.R. 591 (R.I. 2000)
	Bibles & books to \$300	9-26-4(4)
	Burial plot	9-26-4(5)
	Clothing	9-26-4(1)
	Consumer cooperative association holdings to \$50	7-8-25
	Debt secured by promissory note or bill of exchange	9-26-4(7)
	Jewelry to \$2,000	9-26-4 (14)
	Motor vehicles to \$12,000	9-26-4 (13)
	Prepaid tuition program or tuition savings account	9-26-4 (15)
public benefits	Aid to blind, aged, disabled; general assistance	40-6-14
	Crime victims' compensation	12-25.1-3(b)(2)
	Family assistance benefits	40-5.1-15
	State disability benefits	28-41-32
	Unemployment compensation	28-44-58
	Veterans' disability or survivors' death benefits	30-7-9
	Workers' compensation	28-33-27
tools of trade	Library of practicing professional	9-26-4(2)
	Working tools to \$1,500	9-26-4(2)
wages	Earned but unpaid wages due military member on active duty	30-7-9
	Earned but unpaid wages due seaman	9-26-4(6)
	Earned but unpaid wages to \$50	9-26-4(8)(iii)

wages (continued)	Wages of any person who had been receiving public assistance are exempt for 1 year after going off of relief	9-26-4(8)(ii)
	Wages of spouse & minor children	9-26-4(9)
	Wages paid by charitable organization or fund providing relief to the poor	9-26-4(8)(i)
wildcard	\$5,000	9-26-4(16)

South Carolina

Federal bankruptcy exemptions not available. All law references are to Code of Laws of South Carolina unless otherwise noted. (Amounts adjusted for inflation in 2010 (15-41-30(B).)

ASSET	EXEMPTION	LAW
homestead	Real property, including co-op, to \$53,375 (single owner); \$106,750 (multiple owners)	15-41-30(A)(1)
insurance	Accident & disability benefits	38-63-40(D)
	Benefits accruing under life insurance policy after death of insured, where proceeds left with insurance company pursuant to agreement; benefits not exempt from action to recover necessities if parties agree	38-63-50
	Disability or illness benefits	15-41-30(A)(10)(C)
	Fraternal benefit society benefits	38-38-330
	Group life insurance proceeds; cash value to \$50,000	38-63-40(C); 38-65-90
	Life insurance avails from policy for person you depended on to \$4,275	15-41-30(A)(8)
	Life insurance proceeds from policy for person you depended on, needed for support	15-41-30(A)(12)(C)
	Proceeds & cash surrender value of life insurance payable to beneficiary other than insured's estate & for the express benefit of insured's spouse, children, or dependents (must be purchased 2 years before filing)	38-63-40(A)
	Proceeds of life insurance or annuity contract	38-63-40(B)
miscellaneous	Unmatured life insurance contract, except credit insurance policy	15-41-30(A)(8)
	Alimony, child support	15-41-30(A)(10)(D)
	Property of business partnership	33-41-720
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	ERISA-qualified benefits; your share of the pension plan fund	15-41-30(10)(E),(13)
	Firefighters	9-13-230
	General assembly members	9-9-180
	IRAs & Roth IRAs needed for support	15-41-30(A)(12)
	Judges, solicitors	9-8-190
	Police officers	9-11-270
	Public employees	9-1-1680
personal property	Animals, crops, appliances, books, clothing, household goods, furnishings, musical instruments to \$4,275 total	15-41-30(A)(3)
	Burial plot to \$50,000, in lieu of homestead	15-41-30(1)
	Cash & other liquid assets to \$5,350, in lieu of burial or homestead exemption	15-41-30(A)(5)
	College investment program trust fund	59-2-140
	Health aids	15-41-30(A)(10)

personal property (continued)	Jewelry to \$1,075	15-41-30(A)(4)
	Motor vehicle to \$5,350	15-41-30(A)(2)
	Personal injury & wrongful death recoveries for person you depended on for support	15-41-30(A)(12)
public benefits	Crime victims' compensation	15-41-30(A)(12); 16-3-1300
	General relief; aid to aged, blind, disabled	43-5-190
	Local public assistance	15-41-30(A)(11)
	Social Security	15-41-30(A)(11)
	Unemployment compensation	15-41-30(A)(11)
	Veterans' benefits	15-41-30(A)(11)
	Workers' compensation	42-9-360
tools of trade	Implements, books, & tools of trade to \$1,600	15-41-30(A)(6)
wages	None (use federal nonbankruptcy wage exemption)	15-41-30(A)(7)
wildcard	Up to \$5,350 for any property from unused exemption amounts	

South Dakota

Federal bankruptcy exemptions not available. All law references are to South Dakota Codified Law unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	Gold or silver mine, mill, or smelter not exempt	43-31-5
	May file homestead declaration	43-31-6
	Real property to unlimited value or mobile home (larger than 240 sq. ft. at its base & registered in state at least 6 months before filing) to unlimited value; property cannot exceed 1 acre in town or 160 acres elsewhere; sale proceeds to \$30,000 (\$170,000 if over age 70 or widow or widower who hasn't remarried) exempt for 1 year after sale (spouses may not double)	43-31-1; 43-31-2; 43-31-3; 43-31-4; 43-45-3
	Spouse or child of deceased owner may claim homestead exemption	43-31-13
insurance	Annuity contract proceeds to \$250 per month	58-12-6; 58-12-8
	Endowment, life insurance, policy proceeds to \$20,000; if policy issued by mutual aid or benevolent society, cash value to \$20,000	58-12-4
	Fraternal benefit society benefits	58-37A-18
	Health benefits to \$20,000	58-12-4
	Life insurance proceeds, if clause prohibits proceeds from being used to pay beneficiary's creditors	58-15-70
	Life insurance proceeds to \$10,000, if beneficiary is surviving spouse or child	43-45-6
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	City employees	9-16-47
	ERISA-qualified benefits, limited to income & distribution on \$1,000,000	43-45-16
	Public employees	3-12-115
personal property	Bible, schoolbooks; other books to \$200	43-45-2(4)
	Burial plots, church pew	43-45-2(2),(3)
	Cemetery association property	47-29-25
	Clothing	43-45-2(5)

personal property (continued)	Family pictures	43-45-2(1)
	Food & fuel to last 1 year	43-45-2(6)
public benefits	Crime victim's compensation	23A-28B-24
	Public assistance	28-7A-18
	Unemployment compensation	61-6-28
	Workers' compensation	62-4-42
tools of trade	None	
wages	Earned wages owed 60 days before filing bankruptcy, needed for support of family	15-20-12
	Wages of prisoners in work programs	24-8-10
wildcard	Head of family may claim \$6,000, or nonhead of family may claim \$4,000 of any personal property	43-45-4

Tennessee

Federal bankruptcy exemptions not available. All law references are to Tennessee Code Annotated unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	\$5,000; \$7,500 for joint owners; \$25,000 if at least one dependent is a minor child (if 62 or older, \$12,500 if single; \$20,000 if married; \$25,000 if spouse is also 62 or older)	26-2-301
	2-15-year lease	26-2-303
	Life estate	26-2-302
	Property held as tenancy by the entirety may be exempt against debts owed by only one spouse, but survivorship right is not exempt	<i>In re Arango</i> , 136 B.R. 740 aff'd, 992 F.2d 611 (6th Cir. 1993); <i>In re Arwood</i> , 289 B.R. 889 (Bankr. E.D. Tenn. 2003)
	Spouse or child of deceased owner may claim homestead exemption	26-2-301
insurance	Accident, health, or disability benefits for resident & citizen of Tennessee	26-2-110
	Disability or illness benefits	26-2-111(1)(C)
	Fraternal benefit society benefits	56-25-1403
	Life insurance or annuity	56-7-203
miscellaneous	Alimony, child support owed for 30 days before filing for bankruptcy	26-2-111(1)(E)
	Educational scholarship trust funds & prepayment plans	49-4-108; 49-7-822
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	ERISA-qualified benefits, IRAs, & Roth IRAs	26-2-111(1)(D)
	Public employees	8-36-111
	State & local government employees	26-2-105
	Teachers	49-5-909
personal property	Bible, schoolbooks, family pictures, & portraits	26-2-104
	Burial plot to 1 acre	26-2-305; 46-2-102
	Clothing & storage containers	26-2-104
	Health aids	26-2-111(5)
	Health savings accounts	26-2-105

personal property (continued)	Lost future earnings payments for you or person you depended on	26-2-111(3)
	Personal injury recoveries to \$7,500; wrongful death recoveries to \$10,000 (\$15,000 total for personal injury, wrongful death, & crime victims' compensation)	26-2-111(2)(B),(C)
	Wages of debtor deserting family, in hands of family	26-2-109
public benefits	Aid to blind	71-4-117
	Aid to disabled	71-4-1112
	Crime victims' compensation to \$5,000 (<i>see personal property</i>)	26-2-111(2)(A); 29-13-111
	Local public assistance	26-2-111(1)(A)
	Old-age assistance	71-2-216
	Relocation assistance payments	13-11-115
	Social Security	26-2-111(1)(A)
	Unemployment compensation	26-2-111(1)(A)
	Veterans' benefits	26-2-111(1)(B)
	Workers' compensation	50-6-223
tools of trade	Implements, books, & tools of trade to \$1,900	26-2-111(4)
wages	Minimum 75% of disposable weekly earnings or 30 times the federal minimum hourly wage, whichever is more, plus \$2.50 per week per child; bankruptcy judge may authorize more for low-income debtors	26-2-106,107
wildcard	\$10,000 of any personal property including deposits on account with any bank or financial institution	26-2-103

Texas

Federal bankruptcy exemptions available. All law references are to Texas Revised Civil Statutes Annotated unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	Unlimited; property cannot exceed 10 acres in town, village, city or 100 acres (200 for families) elsewhere; sale proceeds exempt for 6 months after sale (renting okay if another home not acquired, Prop. 41.003)	Prop. 41.001; 41.002; Const. Art. 16 §§ 50, 51
	Must file homestead declaration, or court will file it for you & charge you for doing so	Prop. 41.005(f); 41.021 to 41.023
insurance	Church benefit plan benefits	1407a(6)
	Fraternal benefit society benefits	Ins. 885.316
	Life, health, accident, or annuity benefits, monies, policy proceeds, & cash values due or paid to beneficiary or insured	Ins. 1108.051
	Texas employee uniform group insurance	Ins. 1551.011
	Texas public school employees group insurance	Ins. 1575.006
	Texas state college or university employee benefits	Ins. 1601.008
miscellaneous	Alimony & child support	Prop. 42.001(b)(3)
	Higher education savings plan trust account	Educ. 54.709(e)
	Liquor licenses & permits	Alco. Bev. Code 11.03
	Prepaid tuition plans	Educ. 54.639
	Property of business partnership	6132b-5.01

pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	County & district employees	Gov't. 811.006
	ERISA-qualified government or church benefits, including Keoghs & IRAs	Prop. 42.0021
	Firefighters	6243e(5); 6243a-1(8.03); 6243b(15); 6243e(5); 6243e.1(1.04)
	Judges	Gov't. 831.004
	Law enforcement officers, firefighters, emergency medical personnel survivors	Gov't. 615.005
	Municipal employees & elected officials, state employees	6243h(22); Gov't. 811.005
	Police officers	6243d-1(17); 6243j(20); 6243a-1(8.03); 6243b(15); 6243d-1(17)
	Retirement benefits to extent tax-deferred	Prop. 42.0021
	Teachers	Gov't. 821.005
personal property to \$60,000 total for family, \$30,000 for single adult (include tools of trade in these aggregate limits)	Athletic & sporting equipment, including bicycles	Prop. 42.002(a)(8)
	Bible or other book containing sacred writings of a religion (doesn't count toward \$30,000 or \$60,000 total)	Prop. 42.001(b)(4)
	Burial plots (exempt from total)	Prop. 41.001
	Clothing & food	Prop. 42.002(a)(2),(5)
	Health aids (exempt from total)	Prop. 42.001(b)(2)
	Health savings accounts	Prop. 42.0021
	Home furnishings including family heirlooms	Prop. 42.002(a)(1)
	Jewelry (limited to 25% of total exemption)	Prop. 42.002(a)(6)
	Pets & domestic animals plus their food: 2 horses, mules, or donkeys & tack; 12 head of cattle; 60 head of other livestock; 120 fowl	Prop. 42.002(a)(10),(11)
	1 two-, three- or four-wheeled motor vehicle per family member or per single adult who holds a driver's license; or, if not licensed, who relies on someone else to operate vehicle	Prop. 42.002(a)(9)
public benefits	2 firearms	Prop. 42.002(a)(7)
	Crime victims' compensation	Crim. Proc. 56.49
	Medical assistance	Hum. Res. 32.036
	Public assistance	Hum. Res. 31.040
	Unemployment compensation	Labor 207.075
tools of trade included in aggregate dollar limits for personal property	Workers' compensation	Labor 408.201
	Farming or ranching vehicles & implements	Prop. 42.002(a)(3)
	Tools, equipment (includes boat & motor vehicles used in trade), & books	Prop. 42.002(a)(4)
wages	Earned but unpaid wages	Prop. 42.001(b)(1)
	Unpaid commissions not to exceed 25% of total personal property exemptions	Prop. 42.001(d)
wildcard	None	

Utah

Federal bankruptcy exemptions not available. All law references are to Utah Code unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	Must file homestead declaration before attempted sale of home	78B-5-504
	Real property, mobile home, or water rights to \$20,000 if primary residence; \$5,000 if not primary residence	78-23-3(1),(2),(4)
	Sale proceeds exempt for 1 year	78B-5-503(5)(b)
insurance	Disability, illness, medical, or hospital benefits	78B-5-505(1)(a)(iii)
	Fraternal benefit society benefits	31A-9-603
	Life insurance policy cash surrender value, excluding payments made on the contract within the prior year	78B-5-505(1)(a)(xiii)
	Life insurance proceeds if beneficiary is insured's spouse or dependent, as needed for support	78B-5-505(i)(a)(xi)
	Medical, surgical, & hospital benefits	78B-5-505(1)(a)(iv)
miscellaneous	Alimony needed for support	78B-5-505(a)(vi),(vii)
	Child support	78B-5-505(1)(f),(k)
	Property of business partnership	48-1-22
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	ERISA-qualified benefits, IRAs, Roth IRAs, & Keoghs (benefits that have accrued & contributions that have been made at least 1 year prior to filing)	78B-5-505(1)(a)(xiv)
	Other pensions & annuities needed for support	78-23-6(3)
	Public employees	49-11-612
personal property	Animals, books, & musical instruments to \$500	78B-5-506(1)(c)
	Artwork depicting, or done by, a family member	78B-5-505(1)(a)(ix)
	Bed, bedding, carpets	78B-5-505(1)(a)(viii)
	Burial plot	78B-5-505(1)(a)(i)
	Clothing (cannot claim furs or jewelry)	78B-5-505(1)(a)(viii)
	Dining & kitchen tables & chairs to \$500	78B-5-505(1)(b)
	Food to last 12 months	78B-5-505(1)(a)(viii)
	Health aids	78B-5-505(1)(a)(ii)
	Heirlooms to \$500	78B-5-505(1)(d)
	Motor vehicle to \$2,500	78B-5-506(3)
	Personal injury, wrongful death recoveries for you or person you depended on	78B-5-505(1)(a)(x)
	Proceeds for sold, lost, or damaged exempt property	78B-5-507
	Refrigerator, freezer, microwave, stove, sewing machine, washer & dryer	78B-5-505(1)(a)(viii)
	Sofas, chairs, & related furnishings to \$500	78B-5-506(1)(a)
public benefits	Crime victims' compensation	63-25a-421(4)
	General assistance	35A-3-112
	Occupational disease disability benefits	34A-3-107
	Unemployment compensation	35A-4-103(4)(b)
	Veterans' benefits	78B-5-505(1)(a)(v)
	Workers' compensation	34A-2-422

tools of trade	Implements, books, & tools of trade to \$3,500	78B-5-506(2)
	Military property of National Guard member	39-1-47
wages	Minimum 75% of disposable weekly earnings or 30 times the federal hourly minimum wage, whichever is more; bankruptcy judge may authorize more for low-income debtors	70C-7-103
wildcard	None	

Vermont

Federal bankruptcy exemptions available. All law references are to Vermont Statutes Annotated unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	Property held as tenancy by the entirety may be exempt against debts owed by only one spouse	<i>In re McQueen</i> , 21 B.R. 736 (D. Ver. 1982)
	Real property or mobile home to \$75,000; may also claim rents, issues, profits, & outbuildings	27-101
	Spouse of deceased owner may claim homestead exemption	27-105
insurance	Annuity contract benefits to \$350 per month	8-3709
	Disability benefits that supplement life insurance or annuity contract	8-3707
	Disability or illness benefits needed for support	12-2740(19)(C)
	Fraternal benefit society benefits	8-4478
	Group life or health benefits	8-3708
	Health benefits to \$200 per month	8-4086
	Life insurance proceeds for person you depended on	12-2740(19)(H)
	Life insurance proceeds if clause prohibits proceeds from being used to pay beneficiary's creditors	8-3705
	Life insurance proceeds if beneficiary is not the insured	8-3706
	Unmatured life insurance contract other than credit	12-2740(18)
miscellaneous	Alimony, child support	12-2740(19)(D)
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	Municipal employees	24-5066
	Other pensions	12-2740(19)(J)
	Self-directed accounts (IRAs, Roth IRAs, Keoghs); contributions must be made 1 year before filing	12-2740(16)
	State employees	3-476
	Teachers	16-1946
personal property	Appliances, furnishings, goods, clothing, books, crops, animals, musical instruments to \$2,500 total	12-2740(5)
	Bank deposits to \$700	12-2740(15)
	Cow, 2 goats, 10 sheep, 10 chickens, & feed to last 1 winter; 3 swarms of bees plus honey; 5 tons coal or 500 gal. heating oil, 10 cords of firewood; 500 gal. bottled gas; growing crops to \$5,000; yoke of oxen or steers, plow & ox yoke; 2 horses with harnesses, halters, & chains	12-2740(6), (9)-(14)
	Health aids	12-2740(17)
	Jewelry to \$500; wedding ring unlimited	12-2740(3),(4)

personal property (continued)	Motor vehicles to \$2,500	12-2740(1)
	Personal injury, lost future earnings, wrongful death recoveries for you or person you depended on	12-2740(19)(F), (G),(I)
	Stove, heating unit, refrigerator, freezer, water heater, & sewing machines	12-2740(8)
public benefits	Aid to blind, aged, disabled; general assistance	33-124
	Crime victims' compensation needed for support	12-2740(19)(E)
	Social Security needed for support	12-2740(19)(A)
	Unemployment compensation	21-1367
	Veterans' benefits needed for support	12-2740(19)(B)
	Workers' compensation	21-681
tools of trade	Books & tools of trade to \$5,000	12-2740(2)
wages	Entire wages, if you received welfare during 2 months before filing	12-3170
	Minimum 75% of weekly disposable earnings or 30 times the federal minimum hourly wage, whichever is greater; bankruptcy judge may authorize more for low-income debtors	12-3170
wildcard	Unused exemptions for motor vehicle, tools of trade, jewelry, household furniture, appliances, clothing, & crops to \$7,000	12-2740(7)
	\$400 of any property	12-2740(7)

Virginia

Federal bankruptcy exemptions not available. All law references are to Code of Virginia unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	\$5,000 plus \$500 per dependent; rents & profits; sale proceeds exempt to \$5,000 (unused portion of homestead may be applied to any personal property); exemption is \$10,000 if over 65	<i>Cheeseman v. Nachman</i> , 656 F.2d 60 (4th Cir. 1981); 34-4; 34-18; 34-20
	May include mobile home	<i>In re Goad</i> , 161 B.R. 161 (W.D. Va. 1993)
	Must file homestead declaration before filing for bankruptcy	34-6
	Property held as tenancy by the entirety may be exempt against debts owed by only one spouse	<i>In re Bunker</i> , 312 F.3d 145 (4th Cir. 2002)
	Surviving spouse may claim \$15,000; if no surviving spouse, minor children may claim exemption	64.1-151.3
insurance	Accident or sickness benefits	38.2-3406
	Burial society benefits	38.2-4021
	Cooperative life insurance benefits	38.2-3811
	Fraternal benefit society benefits	38.2-4118
	Group life or accident insurance for government officials	51.1-510
	Group life insurance policy or proceeds	38.2-3339
	Industrial sick benefits	38.2-3549
	Life insurance proceeds	38.2-3122
miscellaneous	Property of business partnership	50-73.108
pensions <i>see also wages</i>	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)

pensions (continued)	City, town, & county employees	51.1-802
	ERISA-qualified benefits to same extent permitted by federal bankruptcy law	34-34
	Judges	51.1-300
	State employees	51.1-124.4(A)
	State police officers	51.1-200
personal property	Bible	34-26(1)
	Burial plot	34-26(3)
	Clothing to \$1,000	34-26(4)
	Family portraits & heirlooms to \$5,000 total	34-26(2)
	Health aids	34-26(6)
	Household furnishings to \$5,000	34-26(4a)
	Motor vehicle to \$2,000	34-26(8)
	Personal injury causes of action & recoveries	34-28.1
	Pets	34-26(5)
	Prepaid tuition contracts	23-38.81(E)
	Wedding & engagement rings	34-26(1a)
public benefits	Aid to blind, aged, disabled; general relief	63.2-506
	Crime victims' compensation unless seeking to discharge debt for treatment of injury incurred during crime	19.2-368.12
	Payments to tobacco farmers	3.1-1111.1
	Unemployment compensation	60.2-600
	Workers' compensation	65.2-531
tools of trade	For farmer, pair of horses, or mules with gear; one wagon or cart, one tractor to \$3,000; 2 plows & wedges; one drag, harvest cradle, pitchfork, rake; fertilizer to \$1,000	34-27
	Tools, books, & instruments of trade, including motor vehicles, to \$10,000, needed in your occupation or education	34-26(7)
	Uniforms, arms, equipment of military member	44-96
wages	Minimum 75% of weekly disposable earnings or 40 times the federal minimum hourly wage, whichever is greater; bankruptcy judge may authorize more for low-income debtors	34-29
wildcard	Unused portion of homestead or personal property exemption	34-13
	\$10,000 of any property for disabled veterans	34-4.1

Washington

Federal bankruptcy exemptions available. All law references are to Revised Code of Washington Annotated unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	Must record homestead declaration before sale of home if property unimproved or home unoccupied	6.15.040
	Real property or manufactured home to \$125,000; unimproved property intended for residence to \$15,000 (spouses may not double)	6.13.010; 6.13.030
insurance	Annuity contract proceeds to \$2,500 per month	48.18.430
	Disability proceeds, avails, or benefits	48.36A.180
	Fraternal benefit society benefits	48.18.400

insurance (continued)	Group life insurance policy or proceeds	48.18.420
	Life insurance proceeds or avails if beneficiary is not the insured	48.18.410
miscellaneous	Child support payments	6.15.010(3)(d)
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	City employees	41.28.200; 41.44.240
	ERISA-qualified benefits, IRAs, Roth IRAs, & Keoghs	6.15.020
	Judges	2.10.180; 2.12.090
	Law enforcement officials & firefighters	41.26.053
	Police officers	41.20.180
	Public & state employees	41.40.052
	State patrol officers	43.43.310
	Teachers	41.32.052
	Volunteer firefighters	41.24.240
personal property	Appliances, furniture, household goods, home & yard equipment to \$2,700 total for individual (\$5,400 for community)	6.15.010(3)(a)
	Books to \$1,500	6.15.010(2)
	Burial ground	68.24.220
	Burial plots sold by nonprofit cemetery association	68.20.120
	Clothing, no more than \$1,000 in furs, jewelry, ornaments	6.15.010(1)
	Fire insurance proceeds for lost, stolen, or destroyed exempt property	6.15.030
	Food & fuel for comfortable maintenance	6.15.010(3)(a)
	Health aids prescribed	6.15.010(3)(e)
	Keepsakes & family pictures	6.15.010(2)
	Motor vehicle to \$2,500 total for individual (two vehicles to \$5,000 for community)	6.15.010(3)(c)
	Personal injury recoveries to \$16,150	6.15.010(3)(f)
public benefits	Tuition units purchased more than 2 years before	6.15.010(5)
	Child welfare	74.13.070
	Crime victims' compensation	7.68.070(10)
	General assistance	74.04.280
	Industrial insurance (workers' compensation)	51.32.040
	Old-age assistance	74.08.210
tools of trade	Unemployment compensation	50.40.020
	Farmer's trucks, stock, tools, seed, equipment, & supplies to \$5,000 total	6.15.010(4)(a)
	Library, office furniture, office equipment, & supplies of physician, surgeon, attorney, clergy, or other professional to \$5,000 total	6.15.010(4)(b)
wages	Tools & materials used in any other trade to \$5,000	6.15.010(4)(c)
	Minimum 75% of weekly disposable earnings or 30 times the federal minimum hourly wage, whichever is greater; bankruptcy judge may authorize more for low-income debtors	6.27.150
wildcard	\$2,000 of any personal property (no more than \$200 in cash, bank deposits, bonds, stocks, & securities)	6.15.010(3)(b)

West Virginia

Federal bankruptcy exemptions not available. All law references are to West Virginia Code unless otherwise noted.

Some of the exemptions in this table may not be available to you in some bankruptcy courts. Before filing bankruptcy, check with a bankruptcy attorney to find out which exemptions are acceptable in your court. See, “Some courts might not allow ‘bankruptcy specific’ exemptions,” at the beginning of this appendix for more information.

ASSET	EXEMPTION	LAW
homestead	Real or personal property used as residence to \$25,000; unused portion of homestead may be applied to any property	38-10-4(a)
insurance	Fraternal benefit society benefits	33-23-21
	Group life insurance policy or proceeds	33-6-28
	Health or disability benefits	38-10-4(j)(3)
	Life insurance payments from policy for person you depended on, needed for support	38-10-4(k)(3)
	Unmatured life insurance contract, except credit insurance policy	38-10-4(g)
	Unmatured life insurance contract's accrued dividend, interest, or loan value to \$8,000, if debtor owns contract & insured is either debtor or a person on whom debtor is dependent	38-10-4(h)
miscellaneous	Alimony, child support needed for support	38-10-4(j)(4)
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	ERISA-qualified benefits, IRAs needed for support	38-10-4(j)(5)
	Public employees	5-10-46
	Teachers	18-7A-30
personal property	Animals, crops, clothing, appliances, books, household goods, furnishings, musical instruments to \$400 per item, \$8,000 total	38-10-4(c)
	Burial plot to \$25,000, in lieu of homestead	38-10-4(a)
	Health aids	38-10-4(i)
	Jewelry to \$1,000	38-10-4(d)
	Lost earnings payments needed for support	38-10-4(k)(5)
	Motor vehicle to \$2,400	38-10-4(b)
	Personal injury recoveries to \$15,000	38-10-4(k)(4)
	Prepaid higher education tuition trust fund & savings plan payments	38-10-4(k)(6)
	Wrongful death recoveries for person you depended on, needed for support	38-10-4(k)(2)
public benefits	Aid to blind, aged, disabled; general assistance	9-5-1
	Crime victims' compensation	38-10-4(k)(1)
	Social Security	38-10-4(j)(1)
	Unemployment compensation	38-10-4(j)(1)
	Veterans' benefits	38-10-4(j)(2)
	Workers' compensation	23-4-18
tools of trade	Implements, books, & tools of trade to \$1,500	38-10-4(f)
wages	Minimum 30 times the federal minimum hourly wage per week; bankruptcy judge may authorize more for low-income debtors	38-5A-3
wildcard	\$800 plus unused portion of homestead or burial exemption, of any property	38-10-4(e)

Wisconsin

Federal bankruptcy exemptions available. All law references are to Wisconsin Statutes Annotated unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	Property you occupy or intend to occupy to \$75,000; \$150,000 for married couples filing jointly; sale proceeds exempt for 2 years if you intend to purchase another home (spouses may not double)	815.20
insurance	Federal disability insurance benefits	815.18(3)(ds)
	Fraternal benefit society benefits	614.96
	Life insurance proceeds for someone debtor depended on, needed for support	815.18(3)(i)(a)
	Life insurance proceeds held in trust by insurer, if clause prohibits proceeds from being used to pay beneficiary's creditors	632.42
	Unmatured life insurance contract (except credit insurance contract) if debtor owns contract & insured is debtor or dependents, or someone debtor is dependent on	815.18(3)(f)
	Unmatured life insurance contract's accrued dividends, interest, or loan value to \$4,000 total, if debtor owns contract & insured is debtor or dependents, or someone debtor is dependent on	815.18(3)(f)
miscellaneous	Alimony, child support needed for support	815.18(3)(c)
	Property of business partnership	178.21(3)(c)
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	Certain municipal employees	62.63(4)
	Firefighters, police officers who worked in city with population over 100,000	815.18(3)(ef)
	Military pensions	815.18(3)(n)
	Private or public retirement benefits	815.18(3)(j)
	Public employees	40.08(1)
personal property	Burial plot, tombstone, coffin	815.18(3)(a)
	College savings account or tuition trust fund	14.64(7); 14.63(8)
	Deposit accounts to \$5,000	815.18(3)(k)
	Fire & casualty proceeds for destroyed exempt property for 2 years from receiving	815.18(3)(e)
	Household goods & furnishings, clothing, keepsakes, jewelry, appliances, books, musical instruments, firearms, sporting goods, animals, & other tangible personal property to \$12,000 total	815.18(3)(d)
	Lost future earnings recoveries, needed for support	815.18(3)(i)(d)
	Motor vehicles to \$4,000; unused portion of \$12,000 personal property exemption may be added	815.18(3)(g)
	Personal injury recoveries to \$50,000	815.18(3)(i)(c)
	Tenant's lease or stock interest in housing co-op, to homestead amount	182.004(6)
	Wages used to purchase savings bonds	20.921(1)(e)
	Wrongful death recoveries, needed for support	815.18(3)(i)(b)
public benefits	Crime victims' compensation	949.07
	Social services payments	49.96
	Unemployment compensation	108.13
	Veterans' benefits	45.03(8)(b)
	Workers' compensation	102.27

tools of trade	Equipment, inventory, farm products, books, & tools of trade to \$15,000 total	815.18(3)(b)
wages	75% of weekly net income or 30 times the greater of the federal or state minimum hourly wage; bankruptcy judge may authorize more for low-income debtors	815.18(3)(h)
	Wages of county jail prisoners	303.08(3)
	Wages of county work camp prisoners	303.10(7)
	Wages of inmates under work-release plan	303.065(4)(b)
wildcard	None	

Wyoming

Federal bankruptcy exemptions not available. All law references are to Wyoming Statutes Annotated unless otherwise noted.

ASSET	EXEMPTION	LAW
homestead	Property held as tenancy by the entirety may be exempt against debts owed by only one spouse	<i>In re Anselmi</i> , 52 B.R. 479 (D. Wy. 1985)
	Real property you occupy to \$10,000 or house trailer you occupy to \$6,000	1-20-101; 102; 104
	Spouse or child of deceased owner may claim homestead exemption	1-20-103
insurance	Annuity contract proceeds to \$350 per month	26-15-132
	Disability benefits if clause prohibits proceeds from being used to pay beneficiary's creditors	26-15-130
	Fraternal benefit society benefits	26-29-218
	Group life or disability policy or proceeds, cash surrender & loan values, premiums waived, & dividends	26-15-131
	Individual life insurance policy proceeds, cash surrender & loan values, premiums waived, & dividends	26-15-129
	Life insurance proceeds held by insurer, if clause prohibits proceeds from being used to pay beneficiary's creditors	26-15-133
miscellaneous	Liquor licenses & malt beverage permits	12-4-604
pensions	Tax-exempt retirement accounts, including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	11 U.S.C. § 522(b)(3)(C)
	Traditional and Roth IRAs to \$1,171,650 per person	11 U.S.C. § 522(b)(3)(C); (n)
	Criminal investigators, highway officers	9-3-620
	Firefighters' death benefits	15-5-209
	Game & fish wardens	9-3-620
	Police officers	15-5-313(c)
	Private or public retirement funds & accounts	1-20-110
	Public employees	9-3-426
personal property	Bedding, furniture, household articles, & food to \$2,000 per person in the home	1-20-106(a)(iii)
	Bible, schoolbooks, & pictures	1-20-106(a)(i)
	Burial plot	1-20-106(a)(ii)
	Clothing & wedding rings to \$1,000	1-20-105
	Medical savings account contributions	1-20-111
	Motor vehicle to \$2,400	1-20-106(a)(iv)
	Prepaid funeral contracts	26-32-102

public benefits	Crime victims' compensation	1-40-113
	General assistance	42-2-113(b)
	Unemployment compensation	27-3-319
	Workers' compensation	27-14-702
tools of trade	Library & implements of profession to \$2,000 or tools, motor vehicle, implements, team & stock in trade to \$2,000	1-20-106(b)
wages	Earnings of National Guard members	19-9-401
	Minimum 75% of disposable weekly earnings or 30 times the federal hourly minimum wage, whichever is more	1-15-511
	Wages of inmates in adult community corrections program	7-18-114
	Wages of inmates in correctional industries program	25-13-107
	Wages of inmates on work release	7-16-308
wildcard	None	

Federal Bankruptcy Exemptions

Spouses filing jointly may double all exemptions. All references are to 11 U.S.C. § 522. These exemptions were last adjusted in 2010. Every three years ending on April 1, these amounts will be adjusted to reflect changes in the Consumer Price Index. Debtors in the following states may select the federal bankruptcy exemptions:

Arkansas	Massachusetts	New Jersey	Texas
Connecticut	Michigan	New Mexico	Vermont
District of Columbia	Minnesota	Pennsylvania	Washington
Hawaii	New Hampshire	Rhode Island	Wisconsin
Kentucky			

ASSET	EXEMPTION	SUBSECTION
homestead	Real property, including co-op or mobile home, or burial plot to \$21,625; unused portion of homestead to \$10,825 may be applied to any property	(d)(1); (d)(5)
insurance	Disability, illness, or unemployment benefits	(d)(10)(C)
	Life insurance payments from policy for person you depended on, needed for support	(d)(11)(C)
	Life insurance policy with loan value, in accrued dividends or interest, to \$11,525	(d)(8)
	Unmatured life insurance contract, except credit insurance policy	(d)(7)
miscellaneous	Alimony, child support needed for support	(d)(10)(D)
pensions	Tax exempt retirement accounts (including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans	(b)(3)(C)
	IRAs and Roth IRAs to \$1,171,650 per person	(b)(3)(C)(n)
personal property	Animals, crops, clothing, appliances, books, furnishings, household goods, musical instruments to \$550 per item, \$11,525 total	(d)(3)
	Health aids	(d)(9)
	Jewelry to \$1,450	(d)(4)
	Lost earnings payments	(d)(11)(E)
	Motor vehicle to \$3,450	(d)(2)
	Personal injury recoveries to \$21,625 (not to include pain & suffering or pecuniary loss)	(d)(11)(D)
	Wrongful death recoveries for person you depended on	(d)(11)(B)

public benefits	Crime victims' compensation	(d)(11)(A)
	Public assistance	(d)(10)(A)
	Social Security	(d)(10)(A)
	Unemployment compensation	(d)(10)(A)
	Veterans' benefits	(d)(10)(A)
tools of trade	Implements, books, & tools of trade to \$2,175	(d)(6)
wages	None	
wildcard	\$1,150 of any property	(d)(5)
	Up to \$10,825 of unused homestead exemption amount, for any property	(d)(5)

Federal Nonbankruptcy Exemptions

These exemptions are available only if you select your state exemptions. You may use them for any exemptions in addition to those allowed by your state, but they cannot be claimed if you file using federal bankruptcy exemptions. All law references are to the United States Code.

ASSET	EXEMPTION	LAW
death & disability benefits	Government employees	5 § 8130
	Longshoremen & harbor workers	33 § 916
	War risk, hazard, death, or injury compensation	42 § 1717
miscellaneous	Debts of seaman incurred while on a voyage	46 § 11111
	Indian lands or homestead sales or lease proceeds	25 § 410; 412a
	Klamath Indian tribe benefits for Indians residing in Oregon; agricultural or grazing lands to \$5,000	25 §§ 543; 545
	Life insurance benefits for serviceman's Group Life Ins. or Veteran's Group Life Ins.	38 § 1970(g)
	Military deposits in savings accounts while on permanent duty outside U.S.	10 § 1035
	Military group life insurance	38 § 1970(g)
	Railroad workers' unemployment insurance	45 § 352(e)
	Seamen's clothing	46 § 11110
	Seamen's wages (except for spousal and child support)	46 § 11109
	Minimum 75% of disposable weekly earnings or 30 times the federal minimum hourly wage, whichever is more; bankruptcy judge may authorize more for low-income debtors	15 § 1673
retirement	CIA employees	50 § 403
	Civil service employees	5 § 8346
	Foreign Service employees	22 § 4060
	Military Medal of Honor roll pensions	38 § 1562(c)
	Military service employees	10 § 1440
	Railroad workers	45 § 231m
	Social Security	42 § 407
	Veterans' benefits	38 § 5301
survivor's benefits	Judges, U.S. court & judicial center directors, administrative assistants to U.S. Supreme Court Chief Justice	28 § 376
	Lighthouse workers	33 § 775
	Military service	10 § 1450

Worksheets

Worksheet 1: Monthly Income	500
Worksheet 2: Your Debts	501
Worksheet 3: Property Checklist	504
Worksheet 4: Property Exemptions.....	508
Worksheet 5: Daily Expenses.....	514
Worksheet 6: Monthly Budget	516

Worksheet 1: Monthly Income

(Combine for you and your spouse, partner, or other joint debtor)

You need to compute your monthly net income. Net income is your gross income less deductions, such as federal, state, and local taxes; FICA; union dues; and money your employer takes out of your paycheck for your retirement plan, health insurance, child support, or loan repayment.

To figure out your monthly net income, do the following calculations (unless you are paid once a month):

- If you're paid weekly, multiply your net income by 52 and divide by 12.
- If you're paid every two weeks, multiply your net income by 26 and divide by 12.
- If you're paid twice a month, multiply your net income by 2.
- If you're paid irregularly, divide your annual net income by 12.

Net Wages or Salary	You		Spouse, Partner, or Joint Debtor		Total Monthly Income
Job 1	\$	+	\$	=	\$
Job 2		+		=	
Other Monthly Income					
Bonuses		+		=	
Commissions		+		=	
Tips		+		=	
Dividends or interest		+		=	
Rent, lease, or license payments		+		=	
Royalties		+		=	
Note or trust payments		+		=	
Alimony or child support		+		=	
Pension or retirement pay		+		=	
Social Security		+		=	
Disability pay		+		=	
Unemployment insurance		+		=	
Public assistance		+		=	
Help from relatives or friends		+		=	
Other		+		=	
Total Income	\$	+	\$	=	\$

Worksheet 2: Your Debts

(Combine for you and your spouse, partner, or other joint debtor)

Debts and other monthly living expenses	Outstanding balance	Monthly payment	Total you are behind	Is the debt secured? (If yes, list collateral)	Priority (1 = highest; 4 = lowest)
Home loans—mortgages, home equity loans					
Homeowners' association dues					
Motor vehicle loans/leases					
Personal and other secured loans					
Department store charges with security agreements					
Judgment liens recorded against you					
Statutory liens recorded against you					
Total this page	\$	\$	\$		

Debts and other monthly living expenses	Outstanding balance	Monthly payment	Total you are behind	Is the debt secured? (If yes, list collateral)	Priority (1 = highest; 4 = lowest)
Tax debts (lien recorded)					
Student loans					
Unsecured personal loans					
Medical bills					
Lawyers' and accountants' bills					
Credit card bills					
Total this page	\$	\$	\$		

Debts and other monthly living expenses	Outstanding balance	Monthly payment	Total you are behind	Is the debt secured? (If yes, list collateral)	Priority (1 = highest; 4 = lowest)
Department store (unsecured) and gasoline company bills					
Alimony and child support					
Back rent					
Tax debts (no lien recorded)					
Unpaid utility bills					
Other					
Total this page	\$	\$	\$		
Total Page 1					
Total Page 2					
Total all pages					

Worksheet 3: Property Checklist

1. Real estate

- ☐ Residence
- ☐ Condominium or co-op apartment
- ☐ Mobile home
- ☐ Mobile home park space
- ☐ Rental property
- ☐ Vacation home or cabin
- ☐ Business property
- ☐ Undeveloped land
- ☐ Farm land
- ☐ Boat/marina dock space
- ☐ Burial site
- ☐ Airplane hangar
- ☐ Time share

2. Cash on hand

- ☐ In your home
- ☐ In your wallet
- ☐ Under your mattress

3. Deposits of money

- ☐ Bank deposit
- ☐ Brokerage account (with stockbroker)
- ☐ Certificates of deposit (CDs)
- ☐ Credit union deposit
- ☐ Escrow account

- ☐ Money market account
- ☐ Money in a safe deposit box
- ☐ Savings and loan deposit

4. Security deposits

- ☐ Electric
- ☐ Gas
- ☐ Heating oil
- ☐ Prepaid rent
- ☐ Security deposit on a rental unit
- ☐ Rented furniture or equipment
- ☐ Telephone
- ☐ Vehicle lease
- ☐ Water

5. Household goods, supplies, and furnishings

- ☐ Antiques
- ☐ Appliances
- ☐ Barbecue
- ☐ Carpentry tools
- ☐ Cell phones, PDAs
- ☐ China and crystal
- ☐ Clocks
- ☐ Dishes
- ☐ Electronic entertainment devices and equipment

- ☐ Food (total value)
- ☐ Furniture
- ☐ Gardening tools
- ☐ Home computer (for personal use)
- ☐ Home printer, fax, or copier
- ☐ Lamps
- ☐ Lawn mower or tractor
- ☐ Microwave oven
- ☐ Patio or outdoor furniture
- ☐ Radios
- ☐ Rugs
- ☐ Sewing machine
- ☐ Silverware and utensils
- ☐ Small appliances
- ☐ Snow blower
- ☐ Sound system
- ☐ Telephones and answering machines
- ☐ Televisions
- ☐ Tools
- ☐ Vacuum cleaner
- ☐ Video equipment (VCR, DVD player, camcorder, digital camera)

Worksheet 3: Property Checklist (continued)

6. Books, pictures, art objects; stamps, coin, and other collections

- ☐ Art prints
- ☐ Bibles
- ☐ Books
- ☐ Coins
- ☐ Collectibles (such as political buttons, baseball cards)
- ☐ Compact discs, records, and tapes
- ☐ Family portraits
- ☐ Figurines
- ☐ Original artworks
- ☐ Photographs
- ☐ Sculpture
- ☐ Stamps
- ☐ Videotapes, DVDs

7. Apparel

- ☐ Clothing
- ☐ Furs
- ☐ Sports clothes

8. Jewelry

- ☐ Bracelets, necklaces, and earrings
- ☐ Engagement and wedding rings
- ☐ Gems

☐ Precious metals

☐ Watches

9. Firearms, sports equipment, and other hobby equipment

- ☐ Bicycles
- ☐ Board games
- ☐ Camera equipment
- ☐ Electronic musical equipment
- ☐ Exercise machine
- ☐ Fishing gear
- ☐ Guns (rifles, pistols, shotguns, muskets)
- ☐ Hang gliding/parasailing equipment
- ☐ Model or remote cars or planes
- ☐ Musical instruments
- ☐ Scuba diving equipment
- ☐ Ski or snowboard equipment
- ☐ Surfboard
- ☐ Other sports equipment
- ☐ Other weapons (swords and knives)

10. Interests in insurance policies

- ☐ Credit insurance
- ☐ Disability insurance

☐ Health insurance

☐ Homeowners' or renters' insurance

☐ Term life insurance

☐ Whole or universal life insurance

11. Annuities

12. Pension or profit-sharing plans

- ☐ IRA
- ☐ Keogh
- ☐ Pension or retirement plan
- ☐ 401(k) account
- ☐ 457 account

13. Stocks and interests in incorporated and unincorporated companies

14. Interests in partnerships

- ☐ General partnership interest
- ☐ Limited partnership interest

15. Government and corporate bonds and other investment instruments

- ☐ Corporate bonds
- ☐ Deeds of trust
- ☐ Mortgages you own

Worksheet 3: Property Checklist (continued)

- ☐ Municipal bonds
- ☐ Promissory notes
- ☐ U.S. savings bonds

16. Accounts receivable

- ☐ Accounts receivable from business
- ☐ Commissions already earned

17. Family support

- ☐ Alimony (spousal support, maintenance) due under court order
- ☐ Child support payments due under court order
- ☐ Payments due under divorce property settlement

18. Other debts owed you where the amount owed is known and definite

- ☐ Disability benefits due
- ☐ Disability insurance due
- ☐ Judgments obtained against third parties but not yet collected
- ☐ Sick pay earned
- ☐ Social Security benefits due
- ☐ Tax refund due for returns already filed
- ☐ Vacation pay earned

- ☐ Wages due
- ☐ Workers' compensation due

19. Powers exercisable for your benefit other than those listed under real estate

- ☐ Right to receive, at some future time, cash, stock, or other personal property placed in an irrevocable trust
- ☐ Current payments of interest or principal from a trust
- ☐ General power of appointment over personal property

20. Interests you have because of another person's death

- ☐ Expected proceeds from a life insurance policy, if the insured has died
- ☐ Inheritance from an existing estate in probate (the owner has died and the court is overseeing the distribution of the property), even if the final amount is not yet known
- ☐ Inheritance under a will that is contingent upon one or more events occurring, but only if the will writer has died

- ☐ Property you are entitled to receive as a beneficiary of a living trust, if the trustor has died

21. All other contingent claims and claims where the amount owed you is not known, including tax refunds, counterclaims, and rights to setoff claims (claims you think you have against a person, government, or corporation but haven't yet sued on)

- ☐ Claims against a corporation, government entity, or individual
- ☐ Potential tax refund but return not yet filed

22. Patents, copyrights, and other intellectual property

- ☐ Copyrights
- ☐ Patents
- ☐ Trade secrets
- ☐ Trademarks
- ☐ Trade names

23. Licenses, franchises, and other general intangibles

- ☐ Building permits
- ☐ Cooperative association holdings

Worksheet 3: Property Checklist (continued)

☐ Exclusive licenses

☐ Liquor licenses

☐ Nonexclusive licenses

☐ Patent licenses

☐ Professional licenses

24. Automobiles and other vehicles (not leased)

☐ Car

☐ Minibike or motorscooter

☐ Mobile or motor home if on wheels

☐ Motorcycle

☐ Off-road or all-terrain vehicle

☐ Recreational vehicle (RV)

☐ Trailer

☐ Truck

☐ Van

25. Boats, motors, and accessories

☐ Boat (canoe, kayak, pontoon, rowboat, sailboat, shell, yacht, etc.)

☐ Boat radar, radio, or telephone

☐ Jet ski

☐ Navigation/GPS equipment

☐ Outboard motor

26. Aircraft and accessories

☐ Aircraft

☐ Aircraft radar, radio, GPS, and other accessories

27. Office equipment, furnishings, and supplies

☐ Artwork in your office

☐ Cell phones, PDAs

☐ Computers, software, modems, printers (for business use)

☐ Copier

☐ Fax machine

☐ Furniture

☐ Rugs

☐ Scanner

☐ Supplies

☐ Telephones

☐ Typewriters

28. Machinery, fixtures, equipment, and supplies used in business

☐ Military uniforms and accoutrements

☐ Tools of your trade

29. Business inventory

30. Livestock, poultry, and other animals

☐ Birds

☐ Cats

☐ Dogs

☐ Fish and aquarium equipment

☐ Horses

☐ Livestock and poultry

☐ Other pets

31. Crops—growing or harvested

32. Farming equipment and implements

33. Farm supplies, chemicals, and feed

34. Other personal property of any kind not already listed

☐ Church pew

☐ Country club or golf club membership

☐ Health aids (for example, wheelchair, crutches)

☐ Portable spa or hot tub

☐ Season tickets

Worksheet 4: Property Exemptions

[illegible]

Worksheet 4: Property Exemptions (continued)

1	2	3	4	5	6
Your property	Value of property	Your ownership share (%,\$)	Amount of liens	Amount of your equity	Exempt? If not, enter nonexempt amount
6. Books, pictures, art objects; stamp, coin, and other collections					
7. Apparel					
8. Jewelry					
9. Firearms, sports equipment, and other hobby equipment					
10. Interests in insurance policies					
11. Annuities					

Worksheet 4: Property Exemptions (continued)

1	2	3	4	5	6
Your property	Value of property	Your ownership share (% , \$)	Amount of liens	Amount of your equity	Exempt? If not, enter nonexempt amount
12. Pension or profit-sharing plans					
13. Stocks and interests in incorporated and unincorporated companies					
14. Interests in partnerships					
15. Government and corporate bonds and other investment instruments					
16. Accounts receivable					

Worksheet 4: Property Exemptions (continued)

1	2	3	4	5	6
Your property	Value of property	Your ownership share (% , \$)	Amount of liens	Amount of your equity	Exempt? If not, enter nonexempt amount
17. Family support					
18. Other debts owed you where the amount owed is known and definite					
19. Powers exercisable for your benefit, other than those listed under real estate					
20. Interests you have because of another person's death					
21. All other contingent claims and claims where the amount owed you is not known					
22. Patents, copyrights, and other intellectual property					
23. Licenses, franchises, and other general intangibles					
24. Automobiles and other vehicles					

Worksheet 4: Property Exemptions (continued)

1	2	3	4	5	6
Your property	Value of property	Your ownership share (%,\$)	Amount of liens	Amount of your equity	Exempt? If not, enter nonexempt amount
25. Boats, motors, and accessories					
26. Aircraft and accessories					
27. Office equipment, furnishings, and supplies					
28. Machinery, fixtures, equipment, and supplies used in business					
29. Business inventory					

Worksheet 4: Property Exemptions (continued)

1	2	3	4	5	6
Your property	Value of property	Your ownership share (%,\$)	Amount of liens	Amount of your equity	Exempt? If not, enter nonexempt amount
30. Livestock, poultry, and other animals					
31. Crops—growing or harvested					
32. Farming equipment and implements					
33. Farm supplies, chemicals, and feed					
34. Other personal property					
	Subtotal (Column 6):				
	Wildcard Exemption				–
	Total Value of NONEXEMPT Property				

Worksheet 5:

Daily Expenses for the Week of

Sunday's Expenses	Cost	Monday's Expenses	Cost
Daily Total		Daily Total	
Tuesday's Expenses	Cost	Wednesday's Expenses	Cost
Daily Total		Daily Total	

Worksheet 6: Monthly Budget

Expense Category	Projected				
Home					
Rent/mortgage					
Property tax					
Insurance					
Homeowners' assn. dues					
Telephone					
Gas and electric					
Water and sewer					
Cable					
Garbage and recycling					
Household supplies					
Housewares					
Furniture and appliances					
Cleaning					
Yard/pool care					
Repairs and maintenance					
Food					
Groceries					
Breakfast out					
Lunch out					
Dinner out					
Coffee and tea					
Snacks					
Clothing					
Clothes, shoes, and accessories					
Laundry, dry cleaning					
Mending					
Self Care					
Toiletries/cosmetics					
Haircuts					
Massage					
Gym membership					
Total Expenses Page 1					

Worksheet 6: Monthly Budget

Expense Category	Projected				
Donations					
Health Care					
Insurance					
Medications					
Vitamins					
Doctor					
Dentist					
Eye Care					
Therapy					
Transportation					
Car payments (buy or lease)					
Insurance					
Registration					
Gas					
Maintenance and repairs					
Parking					
Tolls					
Public transit					
Parking tickets					
Road service (such as AAA)					
Entertainment					
Music					
Movies and rentals					
Concerts, theater, ballet, etc.					
Museums					
Sporting events					
Hobbies and lessons					
Club dues or membership					
Film and developing costs					
Books, magazines, and					
Software and games					
Total Expenses Page 2					

Worksheet 6: Monthly Budget

Expense Category	Projected				
Dependent Care					
Child care					
Clothing					
Allowance					
School expenses					
Toys and entertainment					
Pets					
Food and supplies					
Veterinarian					
Grooming					
Education					
Tuition					
Loan payments					
Books and supplies					
Travel					
Gifts & Cards					
Personal Business					
Supplies					
Copying					
Postage					
Bank and credit card fees					
Legal fees					
Accountant					
Taxes					
Insurance					
Savings and Investments					
Other					
Total Expenses Page 3					
Total Expenses Page 1					
Total Expenses Page 2					
Total Expenses (Pages 1, 2, & 3)					
Total Net Income					

Index

A

AARP, 92, 98

Abuse, by collectors. *See* Prohibited collector actions

Acceleration, 421

Acceleration loans, 125–126, 143, 217

Accounting bills, 51. *See also* Professional services bills

Accounts receivable, 298, 327

Addresses

change notifications, 378

how collection agencies find people, 155–157

See also Moving

Adjustable rate home loans, 94–95, 142, 213

ADR (alternative dispute resolution), 29, 228, 275–277

Adverse action notices, 361, 373, 398–399, 402

Advertising, deceptive, 20, 22, 24, 36, 37

Age discrimination, 370, 394, 397

Airline complaints, 25

Alimony, 11, 45, 69, 421

bankruptcy and, 262, 263, 303, 307, 313

basics, 261–262

credit application questions about, 395

if you are owed alimony, 249

income withholding for, 256

modification requests, 262

tax treatment, 262–263

Alternative dispute resolution, 29, 228, 275–277

Amazon, 84, 85

American Recovery and Reinvestment Act, 49

Annotated codes, 405–406

Annualcreditreport.com, 359, 360, 361

Annuities, 97, 98, 298

Answer (creditor lawsuits), 271, 276, 277, 283–286, 287

Appraisals, 398

Appreciated property, 84, 323–324

Arbitration, 29, 227–228, 275–276

Arrears, 421

child support debts, 248, 249, 250, 253, 254–261

As-is sales, 26

Assets

asset posting requirements for child support debts, 257–258, 260

out-of-state assets, 293

prejudgment attachments, 116–117, 422

property subject to collection, 320–324

questionable transfers of, 311, 321–322, 325–327, 343, 344–345

your credit report and, 358

See also Asset sales; Exempt/nonexempt property; Levies; Liens; Repossessions; *specific types of property*

Asset sales, 83–86

bankruptcy and, 308, 322, 325, 343–345

converting nonexempt property to exempt property, 343–345

liens and, 118–119, 296, 335

lis pendens and, 117

prejudgment attachments and, 116–117

repossession sales, 113–114

selling your car, 47–48, 63, 83, 84, 114

selling your home, 46, 47, 83, 140, 144–146

See also Short sales

Assignments, 221, 225–226, 298, 323
 stopping/objecting to, 299–300
 ATM fees, 208, 381. *See also* Debit cards
 Attachments, 73, 116–117, 118, 322, 422. *See also* Wage attachments
 Attorneys. *See* Lawyers
 Attorneys' fees and court costs, 292–293
 agreement provisions, 217, 292
 consumer lawsuits, 171, 368, 402
 creditor lawsuits, 217, 270, 271–272, 277
See also Lawyers; Legal bills
 Automatic debits, 37, 39, 196, 204
 Automatic deposits, 104
 Automatic stay (bankruptcy), 304, 306–307
 Autos. *See* Vehicles
 Auto title pawns, 102–103, 104

B

Bad checks, 77, 78, 173, 187, 358, 381
 Balance transfers, credit cards, 189, 190–191
 Balloon payments, 130, 137–138, 142–143, 215, 217, 421
 Bank accounts
 automatic debits, 37, 39, 196, 204
 availability to creditors, 73, 118
 collections and, 156
 debit cards, 180, 199–200, 201, 208–210
 error reporting, 208
 exemptions for, 340
 levies against, 297
 postjudgment attachments, 118
 prejudgment attachments, 116–117
 to rebuild credit, 380–381
 for secured credit cards, 379
See also Checks
 Bank charges, bounced check fees, 78, 209
 Bank loans
 consolidation loans, 101
 personal loans, 45, 57–58, 99

private student loans, 232, 239, 241, 242
 to rebuild credit, 382–383
 Bankruptcy, 44, 302–315
 automatic stay, 304, 306–307
 bankruptcy estate property, 308, 325–330
 basics, 302–307, 322, 323, 421
 cautions about bankruptcy assistance ads, 105, 302
 Chapter 7 basics, 307–311
 Chapter 11, 80, 303
 Chapter 13 basics, 311–312, 314–315
 child support/alimony debts and, 253, 262, 263, 303, 307, 312, 313
 claiming exemptions, 321, 333
 cosigners/guarantors and, 218, 344
 credit counseling and debt management requirements, 308, 418
 credit repair after, 304, 349
 debt dischargeability, 244, 304, 309, 312–314
 vs. debt management programs, 416
 deficiency balances and, 113, 130
 effect on collections, 150, 266, 304, 306–307
 effect on credit, 304
 effect on creditor lawsuits, 266, 304
 eligibility, 307–308, 309–311
 eviction and, 306
 filing fees, 302, 307, 311
 foreclosure and, 130, 304, 306, 314
 future claims/acquisitions and, 308, 326, 327
 lien removal, 336
 mentioning in creditor negotiations, 56
 multiple filings, 166, 306, 311
 postbankruptcy discrimination, 397–398
 pre-filing considerations, 54–55, 82, 99, 343–344
 pre-filing transactions, 218, 311, 325–327, 343–345

prior, creditor lawsuits and, 166
 representing yourself, 302
 requesting dismissal, 309
 statistics, 305
 student loans and, 50, 244–245, 304, 313
 tax consequences of debt discharge, 80
 tax debts and, 304, 306, 313, 314
 typical legal fees, 415
 in your credit report, 304, 349, 365
See also Chapter 7 bankruptcy; Chapter 13 bankruptcy; Exemptions; Exempt/nonexempt property

Bankruptcy exemptions, 319. *See also* Exemptions; Exempt/nonexempt property

Bankruptcy petition preparers, 302

Banks
 canceling automatic debits, 37, 39
 collection agency contacts, 156, 157
 complaints about, 425
 new regulatory agency, 25
 prepaid income advance cards, 104
 for secured credit cards, 379, 380
 stale check cashing, 79
See also Bank accounts; Bank charges; Bank loans; Credit cards

Bank setoffs, 120

Below-market interest, 99

BenefitsCheckup, 92–93

Better Business Bureau, 409, 419

Binding arbitration, 29, 227, 275–276

Bond requirements, child support debts, 257–258, 260

Borrowing money. *See* Loans; *specific loan types*

Bounced checks, 77, 78, 173, 187, 358, 381
 fees, 78, 209

Breach of contract, 32, 61, 266. *See also* Warranties

Budgets, 349, 351–353

Business assets, valuing, 334

Business credit cards, 180

C

Cable company complaints, 25

California legal research, 409

Canceled debt, as taxable income, 79–80, 114, 130, 146, 147, 151–152

Canceling contracts, 21, 31–36

with credit repair services, 33, 34, 384

with debt relief companies, 106

door-to-door sales, 32

federal law, 32–33

goods ordered from home, 35–36

layaway purchases, 37

loans secured by your home, 33, 95, 101, 144, 213, 216

possible grounds for, 34–35

refund rights, 32, 33, 35

special rights of servicemembers, 61

state law, 32, 33–34

vehicle purchases and leases, 34, 48, 61, 64–65

Cancellation or discharge (student loans), 70, 121, 239

bankruptcy discharges, 50, 244, 304, 313

basics, 234–237

servicemembers, 70, 237, 238

tax consequences, 80, 239

Capital gains tax, 84

CARD Act, 51, 71, 72–73

Car equity or title loans, 102–103, 104

Cars. *See* Vehicles

Case citations, 407–408

Case law, researching, 406–407, 409, 410–411

Cash

limiting spending to cash purchases, 353

as nonexempt property, 344

See also Bank accounts

- Cash advances, from credit cards, 188–189
- Cashier's checks, 157
- CCCS (Consumer Credit Counseling Service), 416
- Cell phones, 88. *See also* Telephone bills
- CFPB (Consumer Financial Protection Bureau), 25, 186, 394
- C.F.R.(Code of Federal Regulations), 406, 407, 409
- Chapter 7 bankruptcy, 166, 262, 263, 303–304, 312, 349
 - basics, 307–311
 - typical legal fees, 415
 - See also* Bankruptcy
- Chapter 11 bankruptcy, 80, 303
- Chapter 12 bankruptcy, 303
- Chapter 13 bankruptcy, 245, 262, 263, 303, 304, 349
 - basics, 311–312, 314–315
 - vs. debt management programs, 416
 - typical legal fees, 415
 - See also* Bankruptcy
- Charge cards, 71–72
 - late payment fees, 71
 - store charge accounts, 44–45, 51
 - See also* Credit card *entries*
- Check 21, 79, 381
- Checks
 - bad checks, 77, 78, 173, 187, 358
 - caution about paying with, 157
 - check-writing history reporting, 358, 360, 381
 - credit card convenience checks, 188–189
 - overdraft fees, 78, 209
 - for part of debt, as payment in full, 73–77
 - postdated, 77, 79, 169, 173
 - stale checks, 79
 - stop payment orders, 78, 79
- Child care, 249
- Child custody proceedings, 357
- Child support, 11, 45, 68–69, 248–261
 - amount determination, 248–250
 - bankruptcy and, 253, 262, 263, 307, 312, 313
 - basics, 248
 - collections/enforcement, 120–121, 248, 254–261, 295
 - credit application questions about, 395, 396
 - debts in your credit report, 258, 307, 365
 - if you are owed support, 249
 - if you can't make payments, 47, 69
 - informal agreements, 251–252
 - jail time for failure to pay, 248, 259–260
 - modification requests, 69, 250–253, 259
 - “most wanted” lists, 258
 - new spouses' liability for, 256
 - past-due support (arrears), 248, 249, 250, 253, 254–261
 - paternity actions, 254, 306–307
 - tax treatment, 262
 - visitation and, 251
 - when you may stop paying, 251, 253–254
- Child support liens, 119, 257, 259–260
- Child Support Recovery Act, 261
- Church dues, 45
- Citations, how to read, 407–408
- Civil unions, 10, 324
- Claims of exemption, 297–298, 299–300, 321, 333
- Closed-end credit, 212–216, 278, 421. *See also* Loans; *specific loan types*
- COBRA benefits, 49–50
- Codebtors, 353
 - bankruptcy and, 314
 - See also* Cosigners; Joint property/debts; Marital property; Married couples; Unmarried couples

- Code of Federal Regulations (C.F.R.), 406, 407, 409
- Collateral, 6, 44, 421. *See also* Liens; Secured debts; Secured property
- Collection agencies, 4
 - complaining about, 166, 169, 170, 368
 - dealing with collectors, 150, 154, 157, 169–172
 - defined under FDCPA, 151
 - disclosure requirements, 158
 - how they find you, 155–157
 - how they operate, 154–155
 - illegal actions, 150, 166–172
 - lawsuits by, 158, 159–160, 161, 165–166, 169
 - limits on interest charged by, 169
 - negotiating with, 54, 154, 159, 161–165
 - providing personal information to, 157, 165
 - requesting that they cease contacting you, 150, 159–160, 304
 - suing, 153, 154, 166, 169, 171–172
 - third-party contacts by, 155, 167, 173
 - tips for dealing with, 154, 157, 161–165
 - urgency-payment requests, 165
 - See also* Collections
- Collection letters, 152–153, 158
 - responding to, 153–154
- Collections, 150–176
 - after statute of limitations expiration, 153–154, 160–161
 - alimony debts, 262
 - bankruptcy and, 150, 266, 304, 306–307
 - bank setoffs, 120
 - basics, 150–152
 - child support debts, 120–121, 248, 254–261
 - collecting child support/alimony owed you, 249
 - collection requests and responses, 151–154, 157–161
 - deficiency balances, 130
 - finance companies, 101
 - interest rate limits, 169
 - lawyers as collectors, 151, 153, 158
 - loan cosigners, 157
 - lump-sum settlements, 162
 - marital property subject to, 13–14, 16–17, 324, 328–330, 335
 - by original creditor, 151–154
 - prohibited collector actions, 150, 166–172
 - protections for servicemembers, 83
 - providing personal information, 157, 165
 - requests for postdated checks, 77, 79, 169, 173
 - state laws, 118, 151, 169
 - statutes of limitations, 278–280, 281–282
 - student loan debts, 50, 100, 120–121, 238, 245
 - third-party collections, 118
 - tips for dealing with collectors, 150, 154, 157, 161–165
 - typical scenarios, 151–152
 - verifying creditor's name and address, 158, 159
 - what to expect, 152–157
 - in your credit report, 162–163, 364–365
 - your right to verify and dispute debt, 158–159, 171
 - See also* Collection agencies; Creditor lawsuits; Exempt/nonexempt property; Fair Debt Collection Practices Act; Judgment collections; Negotiating with creditors
- College students
 - credit card use, 219
 - See also* Student loans
- Commingle funds and property (married couples), 12, 16

- Common law
 - marital property and debt liability, 14–17, 329
 - researching court decisions, 407
- Community debts, 11–12, 13–14
- Community property law
 - marital property and debt liability, 11–14, 328–329
 - states with, 11
- Community Reinvestment Act (CRA), 394
- Complaint (creditor lawsuits), 267, 268, 270
 - answer to, 271, 277, 283–286, 287
- Complaint letters, 21, 23–26
- Conciliation. *See* Mediation
- Confessions of judgment, 218
- Consolidation loans, 4, 33, 100–101, 104
 - student loan consolidations, 231, 236, 240–242, 243–244
- Consumer Credit Counseling Service (CCCS), 416
- Consumer Financial Protection Bureau (CFPB), 25, 186, 394
- Consumer fraud. *See* Fraud
- Consumer lawsuits
 - against collection agencies, 153, 154, 166, 169, 171–172
 - against credit bureaus, 368
 - against credit card issuers, 205
 - against credit repair clinics, 384
 - attorneys' fees, 171
 - bankruptcy discrimination claims, 398
 - challenging a foreclosure, 126, 128–130
 - over contract cancellations, 35
 - over repossessions, 113, 116
 - over warranty breaches, 27
 - UDAP lawsuits, 21
 - wrongful repossessions, 116
- Consumer Leasing Act, 64, 65
- Consumer Product Safety Commission (CPSC), 25
- Consumer protection agencies. *See* Government agencies
- Consumer Reports, 50
- Contempt of court, 259–260, 298, 321
- Contract defenses, 34–35
- Contractors, 119, 129
- Contracts
 - fraud warning signs, 20–21
 - legal requirements for, 35
 - reinstating (after repossession), 112–113, 114
 - statutes of limitations, 278–280, 281–282
 - See also* Canceling contracts
- Convenience checks, 188–189
- Cosigners
 - basics, 378–379, 421
 - debt liability of, 157, 353
 - debts discharged in bankruptcy, 344
 - discriminatory cosigner requirements, 396
 - required for young adult credit cards, 218–219
- Counterclaims, to creditor lawsuits, 21, 172, 269, 280, 283, 287, 290
- Court costs, 292. *See also* Attorneys' fees and court costs
- Court decisions, researching, 406–407, 409, 410–411
- Court judgments. *See* Judgment collections; Judgments
- Court orders
 - judicial foreclosures, 125, 126, 128, 129
 - for repossessions, 110
 - willful violations of, 120
 - See also* Alimony; Child support
- Court websites, 410
- CPSC (Consumer Product Safety Commission), 25

- CRA (Community Reinvestment Act), 394
- Cram downs, 314–315
- Cramming, 40–41
- Credit applications, 212–216
- after bankruptcy, 304
 - collection agency use of, 155
 - credit cards, 377–378
 - creditor review of, 349
 - credit scores and, 371–372
 - denials or other adverse actions, 196, 361, 362, 363, 373, 398–402
 - inquiries in your credit report, 356–357, 363–364, 377, 380
 - lying on, 311, 383
 - open credit card accounts and, 196, 198
 - spouses' credit history and, 375
 - what lenders look for, 349, 358–359
- See also* Credit discrimination; Security agreements; *specific credit and loan types*
- Credit CARD Act, 179–184
- account holders under 21 years old, 218–219
 - balance computation methods, 189, 190
 - basics, 71, 180
 - canceling card because of changes to terms, 71, 182–184, 185
 - cards and transactions not covered by, 180
 - changes to account terms, 180, 182, 184, 198
 - complaining about violations, 186
 - crediting and application of payments, 180, 190
 - disclosure requirements, 72–73, 184, 189, 190, 193–194, 198
 - fee limits and fee changes, 180, 182, 186–187, 188, 195
 - interest rate increase rules, 51, 71, 180–182, 191
 - late payment consequences, 181–182, 191
 - multiple interest rates, 187–188
 - notice requirements for account changes, 181, 182, 184
 - payment due dates and grace periods, 180, 192
- Credit card debts, 45
- bankruptcy and, 304, 306
 - bank setoffs and, 120
 - borrowing money to pay off, 93–94
 - canceled debt as taxable income, 79–80
 - if you can't pay your bill, 192–193
 - making minimum payments, 6, 51, 72, 190, 191, 375
 - negotiating with issuer, 70–71, 72, 184, 195
 - online repayment calculator, 72
 - payoff rights after closing your account, 71, 182, 184, 195
 - repayment priority, 51, 70, 179
 - spousal liability for, 11–12
 - statistics, 193, 219
 - trouble signs, 4
- Credit card fees, 180, 192
- balance transfer fees, 191
 - cash advance fees, 188–189
 - comparing rates and fees, 197–198
 - fee changes and limits, 180, 182, 186–187, 188, 195
 - late payment fees, 180, 187
 - over-limit fees, 186–187, 378
- Credit card interest, 179–180, 192, 377
- cash advances, 188–189
 - comparing rates, 197–198
 - default rates, 191
 - finance charge calculations, 188, 189–190
 - grace periods, 180, 188, 192, 208, 379
 - introductory teaser rates, 181, 187–188, 189, 196
 - multiple interest rates on one account, 187–188, 191

- notice requirements for rate changes, 181, 182, 188
- rate disclosures, 72, 184, 189
- rate increases, 51, 71, 180–182, 184, 188, 191
- reductions for servicemembers, 61
- requesting a rate reduction, 70, 72
- secured cards, 379
- store and gas cards, 377
- variable rates, 181, 188
- Credit card offers, 193, 195, 198–199, 377–378
 - from collection agencies, 161
- Credit cards, 6, 179–210
 - after bankruptcy, 304, 349
 - applying for, 377–378
 - balance computation, 188, 189–190, 195–196
 - balance transfer gimmicks, 189, 190–191
 - billing errors, 203–205
 - blocks and purchase rejections, 199–200
 - business cards, 180
 - cash advances and convenience checks, 188–189
 - changes to account terms, 180–185, 198
 - charging medical expenses, 68
 - charging tax bills, 69
 - closing accounts, 71, 182–184, 185, 195–197
 - crediting and application of payments, 72, 180, 190, 191
 - credit limits, 184, 358, 371, 378, 379
 - disputing charges, 20, 27, 197, 203–207, 364
 - doing without, 353, 354
 - filing complaints about, 184, 186, 199
 - late payment consequences, 181–182, 191
 - lost or stolen cards, 200–202, 208, 378
 - merchant transaction processing, 200, 201
 - minimum payment changes, 180, 182
 - negotiating with issuers, 70–72, 184
 - new federal law, 51, 71, 72–73, 179–184
 - new regulatory agency, 25
 - number of, 196, 198, 380
 - payment due dates, 180
 - protection offers, 202
 - rebates and rewards, 192, 377
 - to rebuild credit, 375, 377–378
 - required disclosures, 72–73, 184, 189, 190, 193–194, 198
 - rewards and other perks, 192
 - safety precautions, 201, 378
 - secured credit cards, 70, 71, 180, 198, 379–380, 423
 - suining issuers, 205
 - tips for choosing, 188, 197–198
 - traps to watch out for, 186–192
 - Truth in Lending Act protections, 212–216
 - unauthorized charges, 200–203, 206
 - unrequested cards, 198–199
 - using wisely, 193–198, 353
 - See also* Charge cards; Credit CARD Act; Credit card debts; Credit card interest; Credit card offers
- Credit counseling, 72–73, 101
 - bankruptcy requirements, 308, 418
 - basics, 415–420
 - budgeting help, 349
 - cautions about for-profit companies, 105–106, 416–417
 - choosing an agency, 416–417, 418, 419–420
 - credit scores and, 372
 - how agencies work, 415–416
 - mortgage workout help, 141
- Credit discrimination, 394–402
 - basics, 394–395
 - credit decision notice requirements, 361, 373, 398–400
 - postbankruptcy discrimination, 397–398
 - protected categories, 395–398

- responding to credit denials or adverse actions, 400–402
- where to complain, 394, 425
- Credit file. *See* Credit report
- Credit file segregation, 383
- Credit history. *See* Credit report
- Credit insurance, 142, 219–220, 365
- Credit monitoring services, 362–363, 373
- Creditor lawsuits, 108, 117–118, 266–300, 370
 - alternative dispute resolution, 275–277
 - attorneys' fees and court costs, 217, 270, 271–272, 277
 - bankruptcy and, 166, 266, 304
 - basics, 117–118, 165–166, 266–267
 - cautions about ignoring, 166, 271
 - cautions about robo debt collectors, 166, 266
 - by collection agencies, 158, 159–160, 161, 165–166, 169
 - complaint and summons, 267, 268, 270
 - complaint response (answer), 271, 277, 283–286, 287
 - by contractors, 119
 - defenses and counterclaims, 21, 172, 269, 271, 277–280, 283
 - deficiency balances and, 114, 116
 - discovery, 272, 287, 290
 - foreclosures and, 124
 - judgment basics, 292–298
 - judgment proof status, 117–118, 150, 160, 165, 266, 320, 422
 - lawyers for help with, 271, 277
 - over bad checks, 78
 - over unpaid rent, 59, 109
 - prejudgment attachment, 116–117
 - representing yourself, 266, 268, 269, 277, 283, 291, 292
 - service of papers, 268, 270, 287, 288–289
 - settlement conferences, 287, 291
 - settlement negotiations, 271–275
 - in small claims court, 268, 269
 - statute of limitations, 278–280, 281–282
 - summary judgment motions, 272, 290–291
 - third-party collections lawsuits, 118
 - trial, 291–292
 - trial date, 287
 - venue determination, 267–268
 - in your credit report, 275
 - See also* Judgment collections; Judgments
- Creditors, 151
 - address change notifications to, 378
 - collection agency contacts with, 167
 - collections tactics, 151–154
 - complaining to, about collection agency actions, 169, 170
 - credit report access, 356–357
 - debtor's examinations by, 120, 293–294, 321
 - disputing inaccurate credit report information, 367–368
 - explaining negative credit file information to, 369
 - preferential payments to, 218, 311, 322, 326–327, 344
 - See also* Collections; Creditor lawsuits; Negotiating with creditors
- Creditors' meetings (bankruptcy), 308, 312
- Credit rating. *See* Credit report; Credit scores
- Credit repair, 349–391, 421
 - after bankruptcy, 304
 - avoiding overspending, 349–354
 - bank accounts for, 380–381
 - bank loans for, 382–383
 - basics, 349
 - cosigners for, 378–379
 - credit cards for, 375, 377–378
 - local store credit, 381–382
 - secured credit cards for, 379–380

- tips for spouses/ex-spouses, 374–375
- See also* Credit report
- Credit repair organizations, 383–384, 421
 - contract cancellation rights, 33, 34, 384
 - state restrictions, 385–391
- Credit Repair Organizations Act (CROA), 384
- Credit report, 355–371
 - adding a statement, 368–371
 - bankruptcy and, 304, 306, 349, 365
 - basics, 355–359
 - check-writing history, 358, 360, 381
 - child support debts in, 258, 307, 365
 - closed accounts in, 195, 196, 197, 364
 - collection agency access, 156, 167
 - contents, 355–356
 - credit card charge disputes and, 204–205, 207, 364
 - credit card defaults in, 71
 - credit counseling participation in, 419–420
 - credit inquiries in, 356–357, 363–364, 377, 380
 - credit repair clinics and, 383–384
 - deeds in lieu of foreclosure in, 130, 146
 - delinquency and collections reporting in, 56, 161, 162–163, 306, 364–365, 367, 381
 - disputing inaccurate information, 365–368, 369, 381
 - error statistics and consequences, 363
 - evictions in, 109
 - explaining negative information to creditors, 369
 - fraud and, 362
 - how long negative information stays in, 163, 349, 364–365
 - identity theft and, 362, 363
 - lump-sum settlements in, 56
 - negotiating removal of negative information, 73, 159, 162–163, 164, 258
 - number of credit cards and, 196, 198, 380
 - obtaining free copies, 359–363
 - open-end credit in, 196, 198, 364
 - personal information in, 355–356, 363, 370–371
 - reaging and, 56, 73
 - required default periods and, 55
 - reviewing, 197, 207, 363–365
 - risk-based pricing/adverse action notices and, 361, 373, 399–400, 402
 - secured credit cards in, 379
 - spouses' accounts and debts in, 364, 374–375
 - student loan information in, 241, 365
 - tips for strengthening, 369–371
 - what creditors look for, 349, 358–359
 - who may access, 356–358
 - See also* Credit reporting agencies; Credit scores
- Credit reporting agencies, 355–356
 - check verification companies, 360, 381
 - contact information, 362
 - credit scoring and, 372–373
 - disputing credit report information, 365–368, 369, 381
 - eviction reporting, 109
 - filing complaints about, 368
 - free credit reports from, 359–363
 - obtaining credit score, 361
 - offers from, 362–363
 - opting out of credit card offers, 199
 - reporting identity theft, 362
 - See also* Credit report; Fair Credit Reporting Act
- Credit score notices, 399, 400
- Credit scores, 71, 355, 369
 - basics, 371–374, 421
 - credit counseling participation and, 419–420
 - obtaining your score, 361, 373–374

- tips for raising, 374
- Credit unions, 198
 - complaints about, 425
 - loans for credit repair, 382–383
 - prepaid income advance cards, 104
 - for secured credit cards, 379, 380
- Criminal prosecution
 - bankruptcy and, 306
 - failure to pay child support, 261
 - for fraud, 322
 - for writing bad checks, 78
 - See also* Fines; Jail
- Criminal records, 365
- CROA (Credit Repair Organizations Act), 384

D

- Damages, 415
 - bad checks, 78
 - collections abuse claims, 171–172, 283
 - credit discrimination claims, 402
 - credit reporting abuse, 368
- Data aggregators, 156
- Deadbeat Dad Law, 261
- Death, student loan liability and, 236
- Death benefits, 328, 341
- Debit cards, 180, 199–200, 201, 208–210
- Debt amount, determining, 5–6
- Debt cancellation, as taxable income, 79–80, 114, 130, 146, 147, 151–152
- Debt collectors
 - defined under FDCPA, 151
 - lawyers as, 151, 153, 158
 - See also* Collection agencies
- Debt consolidation loans, 4, 33, 100–101, 104
 - student loan consolidations, 231, 236, 240–242, 243–244
- Debt counseling. *See* Credit counseling
- Debt management plans, 415–416, 416–417, 418, 420
 - bankruptcy requirement, 308, 418
 - See also* Credit counseling
- Debt management services or negotiation companies, for-profit, 105–106
- Debtors Anonymous, 354
- Debtor's examinations, 120, 293–294, 321
- Debt payments. *See* Payment plans; Payments
- Debt repayment
 - cautions about bad/postdated checks, 77, 78
 - from nonexempt property sales proceeds, 344
 - partial payments to settle in full, 55–56, 71, 73–77
 - prioritizing debts for, 52, 108
 - See also* Chapter 13 bankruptcy; Lump-sum settlements; Negotiating with creditors; Payment plans; Raising money
- Debt repayment priority, 44–52, 108
 - high-priority debts, 44, 46–49, 51–52
 - low-priority debts, 44, 50–52
 - medium-priority debts, 49–50, 52
- Debt settlement companies, 105
- Debts you may not owe, 20–41, 280, 283
 - automatic bank account deductions, 37, 39
 - fraudulent/illegal acts of sellers, 20–26
 - goods you did not order, 36–37, 38
 - “lemon” vehicles, 29–31
 - lost or stolen credit or debit cards, 200–202
 - mail-ordered goods, 25, 35–36, 38
 - mortgage late payment penalties, 31
 - sales or loan contracts you canceled, 31–36
 - telephone slamming or cramming, 39–41
 - unauthorized/disputed credit card charges, 200–203
 - warranty breaches by sellers, 26–29, 283
 - See also* Canceling contracts; Identity theft
- Debt trouble signs, 4

- Debt types, 44–46
- Debt writeoffs, 79, 114, 151. *See also* Debt cancellation
- Deceptive advertising, 20, 22, 24, 36, 37
 - debt solutions ads, 104–106
 - See also* Fraud
- Deeds in lieu of foreclosure, 46, 130, 146–147
- Deeds of trust, 125. *See also* Mortgages
- Default consequences, 108–122
 - bank setoffs, 120
 - basics, 51, 108
 - credit card account changes, 51
 - credit card debt, 71
 - credit report notations, 55, 71
 - eviction, 108–109
 - jail, 120
 - liens, 118–119
 - loan acceleration, 125–126, 143, 217
 - loss of insurance coverage, 49, 121–122
 - pawnshop loans, 102
 - student loans, 45, 50, 100, 230, 238, 245
 - third-party collections, 118
 - utility service cutoff, 122
 - wage/income garnishment, 50, 118, 166, 245
 - See also* Creditor lawsuits; Foreclosure; Repossessions; *specific debt types*
- Default, defined, 109–110
- Default interest rates (credit cards), 191
- Default judgments
 - ADR requests and, 276
 - basics, 118, 271, 422
 - improper service and, 270
 - robo debt collector lawsuits and, 166, 266
 - small claims court, 269
 - special protections for servicemembers, 61
- Defective products and services, 20, 280
 - disputing credit card charges for, 27, 206–207
 - home improvement fraud, 129
 - “lemon” vehicles, 29–31
 - paid for with debit card, 208
 - suing over, 27
 - warranties, 26–27
 - withholding payments, 27–29
- Deferments, student loans, 62, 70, 237–238
- Deferral payment loans, 98–99
- Deficiency balances, 65, 66, 422
 - foreclosures, 130–131
 - repossessions, 65, 110, 113–116
- Demand letters, 21, 22
- Department of Education, 50, 233
 - ombudsman program, 234, 245
 - website resources, 233, 235, 246
- Department of Energy, 92
- Department of Health and Human Services, 91, 249, 255, 257
- Department of Housing and Urban Development. *See* HUD
- Department of Justice, 425
- Department of Labor, 50, 90
- Department of Transportation, 25
- Department stores. *See* Store credit and charge cards
- Deposit accounts. *See* Bank accounts
- Depositions, 290
- Deposits, availability to creditors, 321
- Direct Consolidation Loans, 241–242
- Direct loans, 231, 234, 235
 - consolidations, 241–242
 - deferments, 237–238
 - repayment plans, 238–240
- Disability cancellations/deferments, student loans, 70, 236
- Disability discrimination, 394
- Disability insurance and benefits, 67, 91, 97, 219

Discharge, 422. *See also* Bankruptcy;
Cancellation or discharge (student loans)

Disclosure requirements

closed-end credit agreements, 212–216

collection letters, 158

contracts, 35

credit card accounts, 72–73, 184, 189, 190,
193–194, 198

credit counseling agencies, 417

loans secured by your home, 212–216

mortgages, 213, 215, 216, 373, 376

vehicle leases, 64

See also Notice requirements

Discovery, 272, 287, 290

Discrimination, 394–402

credit decision notice requirements,
398–400

credit discrimination basics, 394–395

housing discrimination, 394, 395–397, 398,
402

postbankruptcy discrimination, 397–398

protected categories, 394, 395–397

where to complain, 394, 425

Disputed debts

credit card charges, 20, 27, 197, 203–207,
364

partial payments for settlement of, 73,
74–76

stopping payment of checks, 78, 79

time limit for disputing debt, 158

withholding payments, 27–29, 30

See also Debts you may not owe

Dispute resolution

alternative (ADR), 275–277

arbitration, 29, 227–228, 275–276

hospital bills disputes, 68

“lemon” vehicle disputes, 29–30

mediation, 29, 228, 276

District attorneys

bad check diversion programs, 78

filing fraud complaints, 23

Dividends, 327

Divorce, 311, 329, 357

bankruptcy and, 305, 306–307, 308, 328

debt liability and, 11–12, 15

equitable distribution laws, 16

family law property liens, 119

lis pendens claims, 117

property acquired through, 328

See also Alimony; Child support; Marital
debts; Marital property; Separation

Document requests (lawsuits), 290

Domestic partnerships, 10, 324

Domicile requirements, exemption claims,
337–338

Door-to-door sales contracts, 32

Driver's licenses, 49, 258–259, 307

E

Earned income tax credit, 83

EBay, 84, 85

ECOA (Equal Credit Opportunity Act), 394,
395–397, 398–399

Education expenses

in child support calculations, 250

See also Student loans

EIN (Employer Identification Number), 383

Electronic Funds Transfer Act, 208

Employer Identification Number (EIN), 383

Employment

caution about disclosing your workplace to
collectors, 157

employer collection agency contacts, 167

employer credit report use and access, 355,
357, 367, 369

employment-related student loan
cancellations, 237

- job applications and adverse credit report information, 365
 - new hire reporting, 255
 - postbankruptcy discrimination protections, 397–398
 - terminations related to wage attachments, 295
 - See also* Wage attachments; Wages
 - Employment information
 - in credit report, 356, 357, 358, 369, 370
 - credit scores and, 372
 - obtaining your employment history report, 360
 - Equal Credit Opportunity Act (ECOA), 394, 395–397, 398–399
 - Equifax credit scoring, 372
 - Equitable distribution (divorce), 16
 - Equity in property
 - calculating, 336
 - nonexempt equity, 323–324, 331–332
 - Escrow accounts, for child support debts, 257
 - Evictions, 61, 108–109, 306
 - Exemptions, 108
 - applying to your property, 337–343
 - basics, 299, 330–333
 - claim filing, 333
 - dollar limits on, 338–339
 - domicile requirements, 337–338
 - doubling for married couples, 333, 341
 - federal nonbankruptcy exemptions, 339, 341
 - for tenancy by the entirety property, 329–330
 - types, 331–332
 - waivers of, 227
 - wildcard exemptions, 332, 341
 - See also* Exempt/nonexempt property; Federal bankruptcy exemptions; Homestead exemption
 - Exempt/nonexempt property, 320–345
 - bankruptcy estate property, 308, 325–330
 - basics, 117–118, 319–320, 330, 422
 - claims of exemption, 297–298, 299–300, 321, 333
 - converting nonexempt property to exempt property, 343–345
 - exemption waivers in loan agreements, 227
 - home equity, 323–324
 - inventorying property to determine status, 334–336
 - marital property, 324
 - negotiating to keep nonexempt property, 331
 - nonexempt property in bankruptcy, 307, 308, 314
 - partially exempt property, 323–324, 331–332
 - prejudgment attachment of, 117
 - property subject to collection, 320–324
 - property you expect to receive, 308, 322–323, 326, 327
 - public benefits, 117–118, 120
 - vehicles, 319, 331–332
 - your home, 319
 - See also* Exemptions; *specific types of property*
 - Expenses, 4, 7
 - alimony modifications and, 262
 - child support modifications and, 251
 - in monthly budget, 351–352
 - monthly debt payments, 5–6
 - reducing, 82, 86–89, 352, 353
 - tracking, 350–351
 - Express warranties, 26–27
- ## F
- Fair and Accurate Credit Transactions Act (FACTA), 357

- Fair Credit Billing Act (FCBA), 205
- Fair Credit Reporting Act (FCRA), 161, 356–357, 361, 367, 368
- Fair Debt Collection Practices Act (FDCPA)
- debts/collectors covered by, 150–151
 - disclosure requirements, 158
 - lawyers as debt collectors, 151, 153, 158
 - prohibited collection agency actions, 166–169
 - right to request that collector cease contact, 159–160, 304
 - right to verify and dispute debt, 158–159, 171
 - violations of, 153, 154, 166, 169–172, 279
- Fair Housing Act (FHA), 394, 395–397, 402
- Fair Isaac (FICO) credit scores, 196, 371–372, 374
- False certification, student loans and, 234, 235
- False representation. *See* Misrepresentation
- Familial status discrimination, 394
- Family law real property liens, 119
- Family members. *See* Friends or relatives
- Family Support Act, 248
- Fannie Mae loans, 126
- foreclosure alternatives programs, 135, 141
- FCBA (Fair Credit Billing Act), 205
- FCC (Federal Communications Commission), 25, 40, 41
- FCRA (Fair Credit Reporting Act), 161, 356–357, 361, 367, 368
- FDCPA. *See* Fair Debt Collection Practices Act
- FDIC (Federal Deposit Insurance Corporation), 409, 420, 425
- Federal agencies. *See* Government agencies; *specific agencies*
- Federal bankruptcy exemptions, 319
- comparing to state exemptions, 339–340
 - doubling for married couples, 333, 341
 - who may use, 330, 338, 339
 - wildcard exemption, 332
- Federal Citizen Information Center, 409
- Federal Communications Commission (FCC), 25, 40, 41
- Federal Deposit Insurance Corporation (FDIC), 409, 420, 425
- Federal Family Education Loans (FFELs), 231, 234, 235, 237, 239
- FFEL consolidation loans, 240, 241, 242
- Federal Housing Administration. *See* FHA *entries*
- Federal Insured Student Loans (FISLs), 231, 240. *See also* Stafford loans
- Federal laws and regulations
- American Recovery and Reinvestment Act, 49
 - automatic debit payments, 37, 39, 120, 204
 - child support, 248, 252, 255, 261
 - contract cancellation rights, 32–33, 95
 - credit cards, 51, 71, 72, 204–206
 - credit discrimination protections, 394, 395–397, 398–400
 - credit repair clinic regulation, 384
 - credit reporting, 357
 - electronic check processing, 79, 381
 - mortgage insurance requirements, 219–220
 - new health care law, 50
 - PMI cancellation, 89
 - researching, 405–406, 409, 410–411
 - special protections for servicemembers, 61–62, 103–104
 - state-federal overlaps, 404–405
 - telephone slamming, 39
 - telephone truth-in-billing rules, 40
 - unauthorized ATM/debit card use, 200–201
 - vehicle leases, 34, 61, 64, 65
 - Wall Street Reform and Consumer Protection Act of 2010, 209–210

- See also* Credit CARD Act; Fair Credit Reporting Act; Fair Debt Collection Practices Act; Truth in Lending Act
- Federal mortgage assistance programs, 60, 131–132, 133–140, 145
- Federal mortgage loans, 126, 135, 139, 141.
See also specific types
- Federal nonbankruptcy exemptions, 339, 341
- Federal Reserve Board, Federal Reserve System, 186, 187, 409, 425
- Federal Student Aid Information Center, 232, 233
- Federal student loans. *See* Student loans; *specific types*
- Federal Trade Commission. *See* FTC
- Fees
- ATM and debit card fees, 208–209
 - bankruptcy filing, 302, 307, 311
 - court filing fees, 271
 - credit counseling agencies, 416, 417, 419
 - lawyers, 411, 414–415
 - loan points and fees, 95, 142
 - prepaid debit cards, 210
 - student loan collections, 245
- See also* Attorneys' fees; Credit card fees
- FFEL Consolidation Loans, 240, 241, 242
- FFELs (Federal Family Education Loans), 231, 234, 235, 237, 239
- FHA (Fair Housing Act), 394, 395–397, 402
- FHA (Federal Housing Administration), Hope for Homeowners program and, 135–136
- FHA loans, 139, 141, 304, 349
- reverse mortgages, 96, 98
- FICO scores, 196, 371–373, 374. *See also* Credit scores
- File segregation scams, 383
- Finance charges. *See* Credit card interest; Interest; Interest rates
- Finance company loans, 100–101
- Financial information
- on bankruptcy forms, 307–308, 325–326, 345
 - debtor's examinations, 120, 293–294, 321
 - providing to collectors or creditors, 165, 239, 294
 - telephone requests for, 378
- Financial institutions
- complaints about, 25, 425
- See also* Banks; Credit unions
- Fines and penalties
- bankruptcy and, 306, 314
 - early retirement account distributions, 89, 90
 - for writing bad checks, 78
- See also* Criminal prosecution; Fees; Jail
- FISLs (Federal Insured Student Loans), 231, 240. *See also* Stafford loans; Student loans
- Food stamps, 91
- Forbearances
- mortgages, 134, 137–138, 139, 140
 - student loans, 238
- Force-placed insurance, 121
- Foreclosure
- bankruptcy and, 130, 304, 306, 314
 - basics, 124–125, 422
 - defenses, 128–130
 - deficiency balances, 130–131
 - government loan assistance applications and, 134, 138
 - judicial foreclosures, 124, 126, 128, 129
 - liens and, 45
 - negotiating to avoid, 131–133
 - nonjudicial foreclosures, 124, 125–126, 129
 - notice requirements, 125–126
 - potential tax consequences, 79–80
 - protections for servicemembers, 61
 - redemption, 126
 - robo-signing, 129

- scam cautions, 127, 143
 - stopping or delaying, 128–130
 - subordinate creditors and, 118–119, 130
 - time required for, 144
 - withholding mortgage payments during, 46–47
 - See also* Mortgages
 - Foreclosure alternatives, 46, 131–147
 - deeds in lieu of foreclosure, 46, 130, 146–147
 - government assistance programs, 133–140
 - loan modification, 131–132, 133, 136–140
 - mortgage workouts, 140–141
 - negotiating with lender, 54, 60, 131–133
 - refinancing, 94, 126, 133, 135–136, 141–144
 - selling your house, 144–146
 - Foreclosure sales, 84, 118, 126, 128
 - For-profit schools, student loans and, 234–236, 242
 - Forwarding addresses, 155–156
 - Fraud, 20–26
 - bankruptcy fraud, 311, 322, 344–345
 - complaining to company, 21
 - complaining to government agencies, 21, 23–26
 - on credit applications, 311, 383
 - credit file fraud alerts, 362
 - fraudulent foreclosure paperwork, 129
 - mail fraud, 25, 36
 - questionable asset transfers/sales, 311, 321–322, 325–326, 343, 344–345
 - telemarketing and online fraud, 25–26
 - warning signs, 20–21
 - See also* Identity theft; Misrepresentation
 - Freddie Mac loans, 126
 - foreclosure alternatives programs, 135, 141
 - Friends or relatives
 - collection agency contacts, 155, 167, 173
 - as cosigners, 218
 - loans from, 45, 51, 99
 - as negotiators, 56
 - transferring assets to, 311, 321–322
 - unauthorized credit card use, 202–203, 206
 - FTC (Federal Trade Commission)
 - canceling mail or telephone orders, 35, 36
 - collections oversight and complaints, 153, 166, 169
 - complaining about credit card abuses, 186
 - consumer fraud oversight, 23
 - consumer information, 409, 420
 - Consumer Response Center contact information, 425
 - credit counseling agencies and, 417, 419
 - credit discrimination complaints, 394, 425
 - credit reporting complaints, 366
 - debt relief company oversight, 105, 106
 - how to file a complaint, 166, 368
 - online auctions tips, 85
 - Future claims, 308, 322–323, 326, 327
- ## G
- Garnishment, 322. *See also* Attachments; Wage attachments
 - Gasoline credit cards, 51, 377, 378, 380
 - Gifts
 - below-market loans as, 99
 - canceled debts as, 80
 - marital property ownership, 13, 329
 - questionable gifts of assets, 311, 321–322, 325–326, 343
 - Government agencies
 - credit report access, 357
 - for discrimination complaints, 394, 425
 - for fraud or unfair business practices complaints, 23, 25–26, 169
 - locating websites, 410
 - postbankruptcy discrimination protections, 397

See also specific agencies

Government benefits. *See* Public benefits

Government mortgage assistance programs, 60, 131–132, 133–140

Government Printing Office, 409

Government records, collection agency access, 157

Grace periods

credit cards, 180, 188, 192, 208, 379

debit cards, 208

GSLs (Guaranteed Student Loans). *See* Stafford loans

Guarantees. *See* Warranties

Guarantors, 378, 422. *See also* Cosigners

Guaranty agencies, student loans, 233

H

H4H (Hope for Homeowners), 135–136

HAFA (Home Affordable Foreclosure Alternatives Program), 133, 134, 144–147

HAMP (Home Affordable Modification Program), 132, 133, 134, 136–138, 139, 145

Harassment, by collectors, 168, 171–172, 173.

See also Prohibited collector actions

Hardship

Chapter 13 bankruptcy hardship

discharges, 312

student loan deferments, 70, 238

student loan discharges, 244, 313

student loan payment plans, 239–240

HARP (Home Affordable Refinance Program), 133, 135

Health insurance, 49–50, 67, 353

child support requirements, 249

obtaining insurance records, 360

problems with billers and, 68

Hearings

bankruptcy hearings, 308, 312

on child support liens, 257

child support modification, 251–252, 252–253

claim of exemption hearings, 297–298, 299–300

contempt of court (child support order violations), 259–260

debtor's examinations, 120, 293–294, 321

paternity actions, 254, 306–307

on prejudgment attachment, 116–117

small claims court basics, 269

student loan collection actions, 245

wage attachment objections, 260, 296

HECM Program, 96, 98

High-cost loans, special protections for, 213, 215–216, 217

High-priority debts, 44, 46–49, 51–52

HMDA (Home Mortgage Disclosure Act), 396

HOEPA (Home Ownership Equity Protection Act), 215–216

Home Affordable Foreclosure Alternatives Program (HAFA), 133, 134, 144–147

Home Affordable Modification Program (HAMP), 132, 133, 134, 136–138, 139, 145

Home Affordable Refinance Program (HARP), 133, 135

Home Affordable Unemployment Program (UP), 133, 134

Home equity, 47, 89. *See also* Home equity loans; Homestead exemption

Home Equity Conversion Mortgage (HECM) Program, 96, 98

Home equity loans and lines of credit, 6, 44 basics, 93–95

cancellation rights, 33, 95, 101, 129, 144, 213, 216

deductibility of interest, 93, 95, 100–101

if you can't make payments, 46–47

interest rates, 94–95, 129–130

negotiating with lenders, 54, 60

- to redeem repossessed property, 113
 - repayment priority, 46–47
 - Second Lien Modification Program (2MP), 133, 137, 138–139
 - secured debt consolidation loans, 100–101
 - special protections for high-cost loans, 215–216
 - Truth in Lending Act protections, 31, 33, 95, 212–216
 - See also* Reverse mortgages
 - Home improvement fraud, 129
 - Home loans. *See* Home equity loans;
 - Mortgages
 - Home Mortgage Disclosure Act (HMDA), 396
 - Homeowner's associations, liens by, 45
 - Home Ownership Equity Protection Act (HOEPA), 215–216
 - Homeowners' insurance, 67, 121
 - Home repairs/improvements, loans for, 99, 129
 - Homes, 46–47
 - cautions about using as collateral, 101, 380, 382
 - creditor access for repossessions, 111, 112
 - domicile rules for exemption claims, 337–338
 - liens on, 118–119, 257, 296–297, 324
 - property tax reassessments, 87
 - selling your home, 46, 47, 83, 140, 144–146
 - short sales, 46, 60, 144–146
 - See also* Foreclosure; Home equity; Home equity loans; Homestead exemption; Mortgages
 - Homestead declaration, 340
 - Homestead exemption, 296–297, 320, 333, 339–340
 - dollar limits on (bankruptcy filings), 338–339
 - partial protection from, 323–324
 - Hope for Homeowners (H4H), 135–136
 - Hospital bills, 68. *See also* Medical bills
 - Household goods, 221, 299, 319
 - Housing discrimination, 394, 398
 - Fair Housing Act, 394, 395–397, 402
 - HUD (Department of Housing and Urban Development), 98, 127, 134, 138, 140, 394
 - HUD loans, 141
- I
- IBRP (Income Based Repayment Plan), 239, 240, 241
 - ICRP (Income Contingent Repayment Plan), 239, 240, 241
 - Identity theft, 235, 362, 363
 - IDM (informal dispute mechanism), 29–30
 - Immigration proceedings, 357
 - Immigration status, 397
 - Implied warranties, 26
 - Incapacity, as contract defense, 34
 - Income
 - adjusting tax withholding, 82–83, 121
 - alimony as taxable income, 262–263
 - alimony modifications and, 262
 - bankruptcy eligibility and, 307–308, 309–311
 - from bankruptcy estate property, 327–328
 - canceled debts as, 79–80, 114, 130, 146, 147, 151–152
 - child support modifications and, 250–251
 - credit scores and, 372
 - determining monthly income, 5
 - future, creditor claims to, 308, 322–323, 326, 327
 - increasing, 82
 - in monthly budget, 352
 - in your credit report, 355, 358
 - See also* Wage attachments

- Income Based Repayment Plan (IBRP), 239, 240, 241
- Income Contingent Repayment Plan (ICRP), 239, 240, 241
- Income-Sensitive Repayment Plan (ISRP), 239–240, 241
- Income taxes. *See* Tax *entries*
- Indian tribes, payday lending and, 104
- Individual debts of spouses, 11–12, 14, 15, 17
- Informal dispute mechanism (IDM), 29–30
- Inherited property
 - as bankruptcy estate property, 308, 327, 328
 - marital property ownership, 13, 329
- Insolvency, 80
- Inspection requests (lawsuits), 290
- Installment agreements, 422
 - as lawsuit settlements, 272, 275
 - payments as positive credit information, 349, 370, 383
 - for tax debts, 48–49, 69
 - See also* Loans; Payment plans; *specific loan types*
- Insurance
 - annuities and reverse mortgages, 97, 98
 - availability to creditors, 322, 327, 328
 - company access to credit report, 357
 - default and loss of coverage, 49, 121–122
 - force-placed insurance, 121
 - negotiating payments/reducing costs, 67
 - private mortgage insurance, 88–89, 145, 147
 - repayment priority, 49–50, 67
 - required by lenders, 49, 67, 110, 121, 219
 - See also specific types*
- Insurance claims reports, 360
- Insurance contracts, 32
- Interest
 - on child support debts, 250
 - on court judgments, 169, 422–423
 - in money judgments, 292
 - student loans, 237, 238, 239, 241
- Interest rates
 - below-market rates, 99
 - car title loans, 103
 - credit scores and, 371, 373
 - debt consolidation loans, 100, 101
 - disclosure requirements, 212, 213, 214
 - home loans, 94–95, 129–130, 142, 213
 - judgment collections, 169
 - legal limits, 102, 104, 129–130, 169, 174–176
 - passbook loans, 382
 - pawnshop loans, 102
 - payday loans, 103–104
 - reductions and protections for
 - servicemembers, 61, 62, 103–104
 - risk-based pricing notice requirement, 399–400
 - special protections for high-cost loans, 215–216
 - subprime loans, 216, 376
 - tax refund anticipation loans, 101
 - See also* Credit card interest; Mortgage interest
- Interrogatories, 290
- Intoxicated driving debts, 314
- Investments, 354
- IRS
 - checking nonprofit status, 417, 419
 - consumer information, 409
 - effect of bankruptcy on collection efforts, 306
 - negotiating with, 48–49, 69–70
 - tax information and advice, 102
 - tax liability for canceled debts, 79–80, 114, 130, 146, 147, 151–152
 - tax refund interceptions, 50, 100, 120–121, 245, 256, 262

See also Tax entries

ISRP (Income-Sensitive Repayment Plan),
239–240, 241

J

Jail, 108, 120

contempt of court, 259–260, 298, 321

failure to pay child support, 248, 259–260

Joint property/debts, 5, 314, 353. *See also*
Cosigners; Marital debts; Marital property
Judgment collections, 52, 73, 157, 293–298,
357

alimony, 262

basics, 118, 293–294

child support debts, 254, 260–261

claims of exemption, 297–298, 299–300,
321, 333

debtor's examinations, 120, 293–294, 321

interest rates, 169

negotiating, 73, 299

out-of-state judgments, 293

property levies and assignments, 297–298

property liens, 6, 45, 73, 294, 296–297, 336

property subject to collection, 320

special exemption rules, 320

stopping, 297, 298–300

wage attachments, 118, 294–296

See also Exempt/nonexempt property;

Wage attachments

Judgment creditors, 73, 293, 357, 422

Judgment debtors, 293, 422

Judgment liens. *See* Judicial liens

Judgment proof status, 117–118, 150, 160, 165,
266, 320, 422

Judgments, 292–300

basics, 292–293, 422

confession of judgment provisions, 218

duration, 117, 293

eviction judgments, 108, 306

interest in, 292

payment priority, 50, 51–52

postjudgment interest, 169, 422

prejudgment interest, 169, 422–423

stipulated judgments, 272, 275

summary judgments, 272, 290–291

in your credit report, 160, 275

See also Default judgments; Judgment
collections

Judicial foreclosures, 124, 126, 128, 129. *See
also* Foreclosure

Judicial liens, 6, 45, 73, 294, 296–297, 336.

See also Liens

L

Landlords

credit report access, 357

evictions, 61, 108–109, 306

negotiating with, 46, 47, 59–60

suits for unpaid rent, 59, 109

See also Rent; Tenants

Late payment fees and penalties

closed-end credit agreements, 213

credit and charge cards, 71, 180, 181–182,
187, 191

late automatic debit payments, 39

mortgages, 31, 133, 134

pyramiding fees, 220

requesting reaging, 56, 73

Law libraries, 404, 407, 409

Lawsuits

by collection agencies, 158, 159–160, 161,
165–166, 169

torts, 266–267

in your credit report, 275, 365

See also Consumer lawsuits; Creditor

lawsuits; Judgments; Legal proceedings

Lawyers, 411–415

as arbitrators, 276

- for bankruptcy filings, 302
- collection agency contacts with, 167
- for credit discrimination claims, 402
- for creditor or collection agency negotiations, 160, 165, 275, 412
- creditors' lawyers, 166
- as debt collectors, 151, 153, 158
- fees, 411, 414–415
- finding and working with, 412–414
- free or low-cost legal services, 246
- for help with child support modification, 252
- how they can help, 411–412
- for lawsuit help or representation, 171–172, 271, 276, 277, 291, 292, 412, 415
- for settlement negotiations, 275
- See also* Attorneys' fees; Legal bills
- Layaway purchases, 37, 382
- Leases
 - protections for servicemembers, 61
 - residential leases, 59
 - vehicle leases, 34, 48, 61, 64–65
 - See also* Rent
- Legal aid, 246
- Legal bills, 45, 51
 - bankruptcy and, 304, 306
 - See also* Attorneys' fees and court costs
- Legal citations, 407–408
- Legal claims
 - as potential income, 322, 327
 - See also* Liens
- Legal insurance, 413
- Legal proceedings
 - and third-party access to your credit report, 357
 - See also* Hearings; Lawsuits
- Legal research, 404–411
- “Lemon” vehicles, 29–31
- Letters from collectors. *See* Collection letters

- Letters to collection agencies
 - requesting that they cease contact, 160
 - requesting verification of debt, 159
- Letters to credit card issuers
 - about credit card billing errors, 203–204
 - about lost or stolen cards, 201, 202
 - closing accounts, 183, 185
 - disputing credit card charges, 207
- Letters to creditors
 - about unfavorable credit decisions or offers, 400–402
 - complaining about collection agency activities, 169, 170
 - confirming payment agreements, 73, 159
 - explaining judgment proof status, 160, 320
 - landlords, 47, 60
 - lump-sum settlement offers, 164
 - negotiation letters, 57–58
 - regarding partial payments as payment in full, 74–77
 - requesting alternative dispute resolution, 276, 277
 - withholding payments on defective merchandise, 28
- Levies, 293, 297–298, 321
 - bankruptcy and, 304, 306
 - child support levies, 261, 295
 - debtor's examinations to locate assets, 120, 293–294, 321
 - property subject to collection, 320–324
 - stopping/objecting to, 299–300, 321
 - tax levies, 295, 306
 - See also* Exempt/nonexempt property; Wage attachments
- Lexis, 411
- LexisNexis Personal Reports, 360
- Licenses
 - child support debts and, 258–259, 307
 - driver's licenses, 49, 258–259, 307

- postbankruptcy discrimination protections, 397
- Licensing boards, filing complaints with, 23
- Liens
 - for alimony debts, 262
 - bankruptcy and, 304, 306, 309
 - basics, 6, 45, 118–119, 422
 - child support liens, 119, 257, 259–260
 - in exemption determinations, 335–337
 - judgment (judicial) liens, 6, 45, 73, 294, 296–297, 336
 - lien removal in bankruptcy, 336
 - on personal property, 118, 294, 296, 336
 - on real property, 118–119, 139, 257, 296–297, 324
 - stopping/objecting to, 299–300
 - See also* Secured property; Security interests; Tax liens
- Life insurance, 67, 298, 365
 - bankruptcy and, 308, 328
 - child support requirements, 249
 - credit life insurance, 219
- LIHEAP (Low Income Home Energy Assistance Program), 62
- Liquidation bankruptcy. *See* Chapter 7
- bankruptcy
- Lis pendens claims, 117
- Loan modification programs, 131–132, 133, 136–140, 145
- Loans
 - after bankruptcy, 304
 - balloon payments, 137–138, 142–143, 215, 217
 - bank setoffs for missed payments, 120
 - borrowing against life insurance policy, 67
 - cancellation rights, 33, 95, 101, 129, 143
 - car title loans, 102–103, 104
 - cosigners/guarantors, 157, 218–219, 344, 353, 378–379
 - deferral payment loans, 98–99
 - federal disclosure requirements, 31, 33, 95, 120, 129, 130
 - fraud warning signs, 20–21
 - from friends or relatives, 45, 51
 - late fees, 220
 - loans to avoid, 100–104
 - new regulatory agency, 25
 - personal loans, 45, 57–58, 99
 - prepayment penalties, 33, 142, 213, 215, 216, 220, 423
 - to rebuild credit, 382–383
 - from retirement plans, 90
 - security interests, 44, 221, 222–224
 - special protections for servicemembers, 61–62, 83, 103
 - statutes of limitations for, 281–282
 - tax refund anticipation loans, 62, 100, 101–102, 104, 161
 - Truth in Lending Act protections, 31, 33, 95
 - typical loan agreement provisions, 217–221, 227–228
 - See also* Contracts; Credit applications; Predatory loans; Secured property; Security agreements; *specific loan types*
- Loan servicers, 124–125, 131
 - student loans, 233
 - See also* Foreclosure; Mortgages
- Local prosecutor, filing complaints with, 23
- Loss of income insurance, 219
- Lost or stolen credit or debit cards, 200–202, 208, 378
- Low Income Home Energy Assistance Program (LIHEAP), 62
- Low-priority debts, 44, 50–52, 179
- Lump-sum settlements, 55–56, 162
 - after lawsuit filing, 272, 273
 - credit card debts, 71
 - debt settlement companies, 105–106

- deficiency balances (foreclosure), 130
- potential tax consequences, 79–80, 114, 130, 146, 147, 151–152
- tax debts, 69–70

Luxury debts, 311

Lying, 165, 294

- by collectors, 168

- on credit applications, 311, 383

See also Fraud; Misrepresentation

M

Magazine subscriptions, 35, 36, 51

Mail fraud, 25, 36

Mail-ordered goods, 25

- goods you do not receive, 35–36

- unordered goods, 36–37, 38

Mandatory arbitration clauses, 227–228, 275–276

Marital debts

- common law states, 15–17

- community property states, 11–12, 13–14

- credit application questions, 395

- determining amount of, 5

- same-sex couples, 10

Marital property, 10–17

- bankruptcy and, 328–330

- calculating equity in, 336

- common law ownership, 14–15, 329

- community property ownership, 11, 12–13, 328–329

- determining ownership share, 335

- property subject to collection, 13–14,

- 16–17, 324, 328–330, 335

- same-sex marriage states, 10

- transmuted property, 12

Marital settlement agreements, 328

Marital status discrimination, 394, 395–396

Married couples

- credit discrimination protections for spouses, 395

- credit repair tips for spouses, 374–375

- credit report issues, 364, 374–375

- doubling of exemptions for, 333, 341

- new spouses' liability for child support, 256

- premarital agreements, 12

- separate debts of spouses, 11–12, 14, 15, 17, 335

- separate property of spouses, 12–13, 14, 15–16, 17, 329, 335

- wage assignments and, 221

See also Alimony; Child support; Divorce;

Marital debts; Marital property; Separation

Materialman's liens, 45

Means test (bankruptcy eligibility), 307–308, 310–311

Mechanic's liens, 6, 45, 119, 139, 335

Mediation, 29, 228, 276

- letter requesting, 277

Medicaid, 91

Medical bills, 15, 45, 51, 68

- bankruptcy and, 304, 305, 306

Medical history reports, 360

Medical insurance. *See* Health insurance

Medical Insurance Bureau (MIB) records, 360

Medicare Savings Programs, 91

Medium-priority debts, 49–50, 51–52

MIB (Medical Insurance Bureau) records, 360

Military personnel

- child support modification procedures, 252–253

Servicemembers Civil Relief Act

- protections, 61–62, 83, 103–104

- student loan cancellations and deferments, 62, 70, 237, 238

- Minitrials, 276
 - Minors, contracts signed by, 34
 - Misrepresentation
 - by collectors, 168
 - on credit applications, 383
 - of products or contract terms, 20–26, 34
 - See also* Deceptive advertising; Fraud;
 - Lying; Prohibited collector actions
 - Money judgments. *See* Judgment collections; Judgments
 - Money market accounts, 380
 - Money orders, 157
 - Mortgage interest
 - adjustable rates, 142, 213
 - disclosure requirements, 213
 - rate reductions, 61, 133, 135, 137, 139
 - refinance loans, 142
 - subprime loans, 216, 376
 - Mortgages, 6, 44, 60, 125, 221
 - acceleration, 125–126, 143
 - applying for, 376
 - bankruptcy and, 312
 - canceled mortgage debt as taxable income, 80, 130, 146, 147
 - credit reporting, 370
 - credit scores and, 371, 372–373, 376
 - disclosure requirements, 213, 215, 216, 373, 376
 - discrimination protections, 394–397
 - federal assistance/modification programs, 60, 131–132, 133–140, 145
 - federal loans, 126, 135, 139, 141, 304, 349
 - informal repayment plans, 133
 - lender access to your credit report, 357
 - loan contract cancellation rights, 33, 143, 144
 - loss of insurance as default, 121
 - negotiating with lenders and servicers, 54, 60, 131–133, 140–141
 - online calculator, 142
 - private mortgage insurance, 88–89, 145, 147, 219–220
 - property insurance requirements, 121
 - refinancing, 94, 126, 133, 135–136, 141–144, 353
 - reinstatement after missing payments, 125, 126
 - repayment priority, 46–47
 - reverse mortgages, 95–98
 - special protections for high-cost loans, 216
 - subprime loans, 216, 376
 - withholding payments during foreclosure, 46–47
 - workouts and payment plans, 133, 140–141
 - See also* Foreclosure; Home equity loans
 - Motor vehicle department records, 156
 - Moving, change of address notification, 155–156, 378
- ## N
- Names
 - on credit applications, 377
 - in credit reports, 363, 364
 - National Consumer Law Center, 26, 246, 408
 - National Consumers League, 25–26
 - National Defense Student Loans, 232, 234
 - National Direct Student Loans, 232, 234
 - National Foundation for Credit Counseling (NFCC), 416, 417, 419
 - National origin discrimination, 394, 396–397
 - National Student Loan Data System, 233, 236
 - Necessities, 299, 422
 - Negotiating with collection agencies, 54, 150, 159, 161–165
 - Negotiating with creditors, 48, 54–80
 - after debt has gone to collection agency, 54, 159, 161–165
 - after judgment, 73, 299

basics and tips, 54–56, 59
 confirming agreements, 73, 159, 165
 credit and charge card issuers, 70–72, 184
 debt negotiation companies, 105–106
 insurance companies, 67
 IRS, 58–59, 69–70
 to keep nonexempt property, 331
 landlords, 46, 47, 59–60
 lawsuit settlement negotiations, 271–275
 lawyers for help with, 160, 165, 275, 412
 medical and professional services bills, 68
 mortgage lenders and loan servicers, 54,
 60, 131–133, 140–141
 negotiating removal of negative credit
 report information, 73, 159, 162–163, 164,
 258
 over future claims, 323
 payment plans, 56
 potential tax consequences, 79–80
 reducing child support and alimony
 payments, 68–69
 sample letters, 57–58
 secured property payments, 65–66
 student loan debts, 70
 utility and telephone companies, 62–63
 vehicle loans and leases, 63–65
See also Collections; Debt repayment;
 Payment plans
 Nellie Mae student loans, 232
 New hire reporting, 255
 NFCC (National Foundation for Credit
 Counseling), 416, 417, 419
 Nonexempt property. *See* Exempt/nonexempt
 property
 Nonjudicial foreclosures, 124, 125–126, 129.
See also Foreclosure
 Nonprofit credit counseling, 416–417. *See also*
 Credit counseling
 Nonprofit status, checking with IRS, 417, 419

Notice requirements
 changes to credit card terms, 181, 182, 184,
 198
 to cosigners, 218
 credit application decisions, 361, 373,
 398–400
 foreclosures, 125–126
 property levies, 297, 299
 repossessions, 110–111, 112, 113, 116
See also Disclosure requirements

O

Offers in compromise, 69–70
 Online auction and sales sites, 84–85
 Online fraud, 25–26
 Online orders, goods you do not receive,
 35–36
 Online resources, 427–430
 alternative dispute resolution, 228, 276
 bankruptcy, 310, 311
 child support calculators, 249
 child support enforcement, 248, 249, 255,
 257
 COBRA health insurance benefits, 49–50
 collection agency complaints, 166, 368
 consumer lawsuits, 26
 contact information for elected
 representatives, 131
 court websites, 410
 credit bureau complaints, 368
 credit bureau websites, 362
 credit card complaints, 186
 credit card repayment calculator, 72
 credit card terms and features, 193, 198
 credit counseling and debt management
 services, 416–420
 credit discrimination, 394
 credit scores, 196, 374
 Debtors Anonymous, 354

federal consumer protection agencies, 25
 foreclosure, 127, 129
 foreclosure alternatives, 134, 135, 136, 138, 140
 free credit reports, 359, 360–361, 362–363
 government benefits, 90, 91, 92–93
 government mortgage assistance programs, 134, 135, 136, 138, 140
 home values, 132
 housing discrimination complaints, 394
 lawyer referrals, 412, 413
 legal research, 169, 404, 408–411
 legislator names and addresses, 26
 “lemon” vehicles, 30–31
 lender information, 64
 MIB records, 360
 mortgage calculator, 142
 National Consumer Law Center, 26, 246, 408
 new federal health care law, 50
 online and telemarketing fraud, 25–26
 online auction sales, 85
 opting out of credit card offers, 199
 phone slamming or cramming, 40, 41
 Privacy Rights Clearinghouse, 156
 reducing expenses, 89
 refinance options, 143
 reverse mortgages, 98
 secured credit cards, 380
 for servicemembers, 62
 state and local consumer protection agencies, 23, 34, 405
 student loans, 232–238, 240–242, 245–246
 tax assistance, 92
 tax debts, 48, 70
 telephone billing complaints, 41
 tenant history reports, 109, 360
 utility bill assistance program, 62
 vehicle values and sales, 84, 334

withholding tax calculator, 83
 Open-end credit, 212, 278, 422
 amount of credit in your credit report, 196, 198, 364, 380
 See also Credit card *entries*
 Out-of-state judgments, 293
 Overdraft fees, 78, 209

P

Partial payments, 71
 as payment in full, 55–56, 73–77
 statute of limitations revivals and, 279–280
 See also Lump-sum settlements
 Passbook loans, 382–383
 Passports, 259
 Paternity actions, 254, 306–307
 Pawnshops, 102
 Payday loans, 62, 103–104
 Paying debts. *See* Debt repayment;
 Negotiating with creditors; Payment plans
 Payment plans
 confirming agreements in writing, 73, 159, 165
 involving a counseling agency, 415–416
 as lawsuit settlements, 272, 275
 negotiating with creditors/collection agencies, 56, 150, 159, 163, 165
 reaging requests, 56, 73
 reorganization bankruptcy, 303, 311–312, 314
 student loans, 70, 231, 232, 238–240, 241, 243
 tax installment agreements, 48–49, 69
 See also Chapter 13 bankruptcy;
 Installment agreements; Negotiating with creditors; *specific debt types*
 Payments
 canceling automatic deduction payments, 37, 39, 196

- in credit score determinations, 371
- if you are considering bankruptcy, 44
- money orders or cashier's checks for, 157
- urgent payment requests from collectors, 356
- in your credit report, 356, 358
- See also* Negotiating with creditors; Payment plans; Withholding payments; *specific debt types*
- Penalties. *See* Criminal prosecution; Fines and penalties
- Pensions. *See* Retirement accounts
- Perjury cautions, 165, 294, 311, 321, 326
- Perkins loans, 232, 234, 236, 240, 241
- Personal effects, as exempt property, 299, 319
- Personal information
 - in credit report, 355–356, 363, 370–371
 - debtor's examinations, 120, 293–294, 321
 - providing to collectors, 157, 265
 - telephone requests for, 378
 - when you use a credit card, 201
- Personal injury debts, 314
- Personal loans, 45, 57–58, 99. *See also* Loans
- Personal property
 - applying exemptions, 340
 - availability to creditors, 320
 - inside repossessed vehicles, 113
 - levies, 297–298, 299
 - liens on, 118, 294, 296, 336
 - miscellaneous, repossessions of, 111–112
 - negotiating with secured creditors, 65–67
 - pawning, 102
 - security interests, 221
 - selling, 84–86
 - valuation, 334
 - See also* Exempt/nonexempt property; Repossessions; *specific types of property*
- Phone bills. *See* Telephone bills
- Phone slamming or cramming, 39–41
- Physical examination requests (lawsuits), 290
- PLUS loans, 231, 232, 236, 240, 357
- PMI (private mortgage insurance), 88–89, 145, 147, 219–220
- Postdated checks, 77, 79, 169, 173
- Postjudgment interest, 169, 422
- Post office forwarding addresses, 155–156
- Predatory loans, 94, 97, 142–143, 375, 396
 - loan types to avoid, 100–104
 - protections for servicemembers, 62, 103–104
 - subprime mortgages, 216, 376
- Preferential payments to creditors, 218, 311, 322, 326–327, 344
- Prejudgment attachment, 116–117, 422
- Prejudgment interest, 169, 422–423
- Premarital agreements, 12
- Prepaid debit cards, 210
- Prepayment penalties, 33, 142, 213, 215, 216, 220, 423
- Pretexters, 157
- Prioritizing debts, 52, 108
- Privacy Rights Clearinghouse, 156
- Private mortgage insurance (PMI), 88–89, 145, 147, 219–220
- Private student loans, 232, 239, 241, 242
- Process servers, 270
- Product defects. *See* Defective products and services
- Professional licenses
 - child support debts and, 258–259, 307
 - complaining to licensing board, 23
- Professional services bills, 45, 51. *See also* Legal bills; Medical bills
- Prohibited collector actions, 150, 166–169
 - dealing with, 169–172
 - documenting, 172
 - state laws, 169
 - See also* Fair Debt Collection Practices Act

Promissory notes, statutes of limitations, 281–282

Proof of service, 287, 288–289

Property. *See* Assets; Exempt/nonexempt property; *specific types of property*

Property levies. *See* Levies

Property ownership

calculating equity, 336

determining ownership share, 335

See also Joint property/debts; Marital property; Title to property

Property seizure. *See* Assets; Attachments; Repossessions

Property taxes

deferral loans for, 98–99

property tax liens, 119

reassessments, 87

Public benefits, 82, 90–93

agency access to your credit report, 357

bankruptcy and, 306

child support enforcement and, 256

discrimination and, 394, 397

as exempt property, 117–118, 120, 299, 340

free credit report copies and, 361–362

reverse mortgages and, 97

student loan collections and, 245

Public records

child support collections and, 255

collection agency access, 156, 157

credit report information from, 356

Punitive damages, 368, 402

Pyramiding late fees, 220

R

Race discrimination, 394, 396

Raising money, 82–106

cutting expenses, 82, 86–89

deferral payment loans, 98–99

home equity loans for, 93–95

increasing income, 82

personal loans, 99

public and private benefits, 90–93

retirement account withdrawals, 89–90

reverse mortgages, 95–98

selling assets, 83–86, 344

tax refunds, 82–83, 100

what not to do, 100–106

See also Asset sales; Loans; *specific loan types*

RALs (tax refund anticipation loans), 62, 100, 101–102, 104, 161

Reaffirming a debt, 161, 309

Reaging, 56, 73

Real estate contract cancellation rights, 32

Real estate taxes. *See* Property tax *entries*

Real property

credit cards secured by, 180, 380

liens on, 118–119, 139, 257, 296–297, 324

lis pendens claims, 117

loan cancellation rights, 33, 95, 101, 129, 143, 144

selling your home, 46, 47, 83, 140, 144–146

short sales, 46, 60, 140, 144–146

valuation, 334

See also Exempt/nonexempt property;

Foreclosure; Home *entries*; Home equity loans; Mortgages

Rebuilding credit. *See* Credit repair

Recording collections phone calls, 172

Redeeming a loan, 126

Redeeming property, 113, 126, 309, 319

Redlining, 396

Refinancing

balloon payments and, 217

government assistance programs, 133, 135–136

legal protections, 215–216

loan cancellation rights, 33, 143

mortgages, 94, 126, 133, 135–136, 141–144, 353

student loan consolidation, 231, 236, 240–242, 243–244

Refunds

- after you cancel a contract, 32, 33, 35
- letters requesting, 21, 22
- owed to you by schools, 234, 235–236
- See also* Debts you may not owe

Registered domestic partnerships, 10, 324

Regulation Z, 31, 120, 203

Rehabilitation (student loans), 243

Reinstatement

- after repossession, 112–113, 114
- mortgages, 125, 126

Reinvestigation requests, 365–367

Relatives. *See* Friends or relatives

Religious discrimination, 394

Rent, 45, 46, 59–60

- unpaid, lawsuits for, 59, 109
- See also* Landlords; Tenants

Rent income, 327

Reorganization bankruptcy, 303, 311–312. *See also* Chapter 13 bankruptcy

Repairs, 32

- home repair deferral loans, 99
- See also* Defective products and services

Repossessions, 44, 65, 109–116, 152

- alternatives, 84
- bankruptcy and, 113, 313
- basics, 109–110
- in credit report, 364
- deficiency balances, 65, 110, 113–116
- miscellaneous personal property, 111–112
- notice requirements, 110–111, 112, 113, 116
- redemption rights, 113
- reinstatement, 112–113, 114
- suing creditors over, 113, 116
- vehicles, 63–64, 110–111, 113, 114

Requests for reinvestigation, 365–367

Residency requirements. *See* Domicile requirements

Residency status, credit applications and, 397

Retirement accounts and benefits, 89–90, 256

Reverse mortgages, 95–98

Reverse redlining, 396

Revolving (open-end) credit, 212, 278, 422.

- See also* Credit card *entries*

Risk-based pricing notices, 399–400

Robosigning, 129, 166

Royalties, 327, 328

S

Sales contracts. *See* Canceling contracts; Contracts

Sallie Mae student loans, 232

Same-sex couples, 10, 324

Savings accounts. *See* Bank accounts

School closure, as grounds for student loan discharge, 234–235

SCRA (Servicemembers Civil Relief Act), 61–62, 83, 103–104

Second Lien Modification Program (2MP), 133, 137, 138–139

Second mortgages. *See* Home equity loans; Mortgages; Subordinate loans

Secured credit cards, 70, 71, 180, 198, 379–380, 423. *See also* Security interests

Secured creditors, 152, 423

- rights over secured property, 44, 46, 48, 109
- See also* Secured debts; *specific types*

Secured debts, 10, 423

- bankruptcy and, 309, 314–315, 319
- basics, 6, 44–45
- cautions about, 48, 93–94, 101
- debt consolidation loans, 100–101, 104
- repayment priority, 46

- special protections for servicemembers, 61
- See also* Liens; Security interests; *specific types*
- Secured property, 6, 44
 - bankruptcy and, 319
 - creditors' rights over, 44, 46, 48, 109
 - credit property insurance, 219
 - insurance requirements, 49, 67, 110, 121
 - redeeming repossessed property, 113
 - returning to creditor, 65–66, 112
 - selling, 47–48, 84, 109, 114
 - See also* Repossessions; *specific types of property*
- Securities. *See* Stocks and bonds
- Security agreements, 6, 44, 216–228, 423
 - closed-end credit, 212–215
 - typical provisions, 217–221, 227–228
 - See also* Credit card *entries*; Truth in Lending Act
- Security deposits, 59, 62, 118
- Security interests, 44, 221, 322, 423
 - state restrictions, 222–224
 - See also* Liens; Secured debts; Secured property
- Seizure of property. *See* Levies; Repossessions
- Self-employed people, 255, 298
- Selling assets. *See* Asset sales
- Senior citizens
 - age discrimination protections, 370, 394, 397
 - government benefits for, 92–93
 - reverse mortgages and deferral loans for, 95–98
- Separate debts of spouses, 11–12, 14, 15, 17, 335
- Separate property of spouses, 12–13, 14, 15–16, 17, 329, 335
- Separation
 - debt liability and, 11–12, 15
 - property ownership and, 13
- Servicemembers. *See* Military personnel
- Servicemembers Civil Relief Act (SCRA), 61–62, 83, 103–104
- Service of court papers, 268, 270
- Settlement negotiations, creditor lawsuits, 271–275
 - sample settlement agreement, 273–274
- Severance pay, 327
- Sex discrimination, 394, 395
- Sexual orientation discrimination, 395, 396
- Short sales, real estate, 46, 60, 140, 144–146
- Skip tracers, 157
- Slamming, 39–40
- SLS loans (Supplemental Loans for Students), 231, 236, 240
- Small claims court
 - consumer lawsuits, 21, 169, 205
 - creditor lawsuits in, 268, 269
 - See also* Consumer lawsuits
- SNAP (Supplemental Nutrition Assistance Program), 91
- Social Security benefits, 91, 97, 245, 256
- Social Security numbers, 157, 383
 - for child support enforcement, 255
 - in credit report, 360, 370–371
 - file segregation scam, 383
- Spending
 - compulsive spending, 354
 - creating a budget, 349, 351–353
 - reducing, 349–354
 - See also* Expenses
- Spousal debt liability. *See* Marital debts
- Spousal support. *See* Alimony
- SSI (Supplemental Security Income), 91, 97
- Stafford loans, 231, 236, 240
- Stale checks, 79
- State agencies, locating websites, 410

- State attorney general, 419
 - filing complaints with, 23, 366, 368
- State consumer protection agencies, 34, 405
 - researching credit counseling agencies, 419
- State exemptions, 117–118, 319, 320
 - basics, 330–333
 - domicile requirements, 337–338
 - See also* Exemptions; Exempt/nonexempt property
- State laws
 - attorneys' fees awards, 217
 - balloon payments, 217
 - bank setoffs, 120
 - child support, 248, 253, 257–258
 - common law property ownership, 14–17, 329
 - contract cancellation rights, 32, 33–34, 37
 - credit insurance requirements, 219, 220
 - credit repair services, 385–391
 - credit reporting, 357–358
 - damages in bad check cases, 78
 - debt relief companies, 106
 - deficiency balances, 115, 130, 131
 - discrimination protections, 394–395, 396
 - disputed credit card charges, 205
 - evictions, 108
 - exemption claims for basic necessities debts, 299
 - family law real property liens, 119
 - foreclosure, 126, 131
 - interest rates, 102, 104, 169, 174–176
 - judgment collections, 254
 - judgment duration, 293
 - landlord-tenant law, 108, 109
 - lemon laws, 29–31
 - loan acceleration, 126
 - partial payments as payment in full, 73
 - postjudgment property liens, 296–297
 - property subject to levies, 320
 - recording collector phone calls, 172
 - repossessions, 110–111, 112, 113–114, 115
 - researching, 169, 405, 409, 410
 - sales of pawned property, 102
 - security interest restrictions, 221
 - state-federal overlaps, 404–405
 - statutes of limitations, 27, 278, 279–280, 281–282
 - telephone slamming, 39
 - third-party collections, 118
 - UDAP laws, 20
 - unfair collection practices, 151, 169
 - utilities shutoffs and deposits, 62, 63, 122
 - vehicle insurance requirements, 121
 - wage assignment restrictions, 225–226
 - wage attachments/garnishments, 322
 - warranty-related lawsuits, 27
 - See also* Marital property; State exemptions
- State licensing boards, 23
- Statements, adding to credit file, 368–371
- State motor vehicle department records, 156
- State student loan programs, 233
- State tax refund interceptions, 257
- State utility commissions, 41
- Statutes of limitations, 423
 - collections, 153–154, 160–161
 - consumer lawsuits, 27
 - creditor lawsuits, 278–280, 281–282
 - student loan debts, 245
 - waivers, extension, and revivals, 153–154, 160, 279–280
- Stipulated judgments, 272, 275
- Stock options, 323, 326
- Stocks and bonds, 334, 354
- Stolen credit or debit cards, 200–202, 208, 378
- Stop payment orders, 78, 79
- Store credit and charge cards, 44–45, 51, 206–207, 380

- for credit repair, 377, 378
- returning property, 112
- Store credit, local, for credit repair, 381–382
- Student credit card use, 219
- Student Loan Marketing Association (Sallie Mae), 232
- Student loans, 45, 70, 230–246
 - bankruptcy and, 50, 244, 304, 306, 313
 - basics, 230
 - cancellation (discharge) basics, 234–237
 - collections, 50, 100, 120–121, 238, 245
 - consolidation/reconsolidation, 231, 236, 240–242, 243–244
 - credit report notations, 241, 365
 - default consequences, 45, 50, 100, 230, 238, 245
 - default defined, 242
 - deferments, 62, 70, 237–238
 - forbearances, 238
 - for-profit schools, 234–236, 242
 - getting help, 245–246
 - identifying loan holder, 233–234
 - if you are behind or in default, 233–234, 237–238, 240, 242–244
 - interest accrual, rates, and payments, 237, 238, 239, 241
 - lender access to credit report, 357
 - postbankruptcy discrimination protections, 397
 - private loans, 232, 239, 241, 242
 - rehabilitation, 243
 - renegotiating payments, 70
 - repayment plans, 70, 231, 232, 238–240, 241, 243
 - repayment priority, 50
 - special rules for servicemembers, 61, 62, 70
 - statistics, 230
 - terminology, 233
 - types, 231–233

See also Cancellation

- Subordinate loans
 - foreclosure and, 118–119, 130
 - HABA deed in lieu of foreclosure program, 146–147
 - HABA short sale program, 133, 134, 144–146
 - high-cost, legal restrictions on, 215–216
 - Hope for Homeowners program and, 135
 - Second Lien Modification Program (2MP), 133, 137, 138–139
- Subpoena duces tecum, 290
- Subpoenas, 290
- Subprime mortgages, 216, 376
- Summary judgment motions (creditor lawsuits), 272, 290–291
- Summons and complaint (creditor lawsuits), 267, 268, 270
 - responding to, 271, 277, 283–286, 287
- Supplemental Loans for Students (SLs), 231, 236, 240
- Supplemental Nutrition Assistance Program (SNAP), 91
- Supplemental Security Income (SSI), 91, 97

T

- Tax debts
 - bankruptcy and, 304, 306, 313, 314
 - community property and, 11
 - negotiating with IRS, 48–49, 69–70
 - offers in compromise, 69–70
 - property tax deferral loans, 98–99
 - See also* IRS; Tax levies; Tax liens
- Taxes
 - adjusting withholding taxes, 82–83, 121
 - on asset sales, 84
 - canceled debt as taxable income, 79–80, 114, 130, 146, 147, 151–152

- deductibility of loan interest, 93, 95, 100–101
- earned income credit, 83
- electronic filing, 92, 100
- free preparation and filing assistance, 92, 102
- gift taxes, 99
- on retirement plan distributions, 89, 90
- Tax evasion, 120
- Tax forms
 - child support claims, 256
 - Form 1099-C, 79–80, 114, 147
 - Form W-4, 83
- Tax levies, 306
 - wage attachments, 295
- Tax liens, 45, 118, 119, 139, 306
 - property tax liens, 119
 - in your credit report, 365
- Tax refunds, 82–83, 100, 102
 - assignments of, 298
 - interception of, 50, 100, 120–121, 245, 256–257, 262, 307
 - refund anticipation loans, 62, 100, 101–102, 104, 161
- Telemarketing fraud, 25–26
- Telemarketing Sales Rule (FTC), 106
- Telephone bills, 40, 47, 63, 87–88
- Telephone calls
 - from collectors, 153, 154, 167, 168, 172
 - to negotiate with creditors, 59
 - requests for personal or financial information, 378
- Telephone companies
 - complaining about, 25, 41
 - slamming or cramming, 39–41
- Telephone orders, goods you do not receive, 35–36
- Telephone service, 122, 306
- Tenancy by the entirety, 17, 329–330
- Tenants
 - fair housing protections for, 394, 395–397
 - tenant history reports, 109, 360
- Third mortgages. *See* Home equity loans; Mortgages; Subordinate loans
- Third-party collections, 118
- Third-party collectors. *See* Collection agencies
- Third-party contacts, by collection agencies, 155, 167, 173
- Threats, by collectors. *See* Prohibited collector actions
- TILA. *See* Truth in Lending Act
- Title to property
 - changing, 345
 - liens and, 118
 - lis pendens claims, 117
 - marital property/debt liability and, 12, 16, 17
 - tenancy by the entirety, 17, 329–330
- Tolling, 279–280
- Torts, 266–267
- Trials (creditor lawsuits), 291–292
 - minitrials, 276
- Trust accounts, 257, 420
- Trust assets/income, 321, 322, 327
- Truth in Lending Act (TILA)
 - bank setoffs, 120
 - closed-end credit, 212–215
 - credit card charge disputes, 203
 - disclosure requirements, 129, 212–214
 - late payment penalties, 31
 - loan contract cancellation rights, 33, 95, 129, 213
 - Regulation Z, 31, 120, 203
 - special protections for high-cost loans, 213, 215–216
- See also* Credit card *entries*

2MP (Second Lien Modification Program),
133, 137, 138–139

U

UDAP (unfair and deceptive acts and
practices), 20, 21

Unconscionability, as contract defense, 34–35

Undue hardship

for bankruptcy discharge of student loans,
244, 313

See also Hardship

Unemployment, 305, 361

in credit report, 369

mortgage assistance through Home
Affordable Unemployment Program
(HARP), 133, 134

student loan deferments, 237, 238

Unemployment insurance, 90–91

child support enforcement and, 256

Unfair and deceptive acts and practices
(UDAP), 20, 21

Unfair collection practices, 168–169. *See also*
Fair Debt Collection Practices Act

Union dues, 45

U.S. government agencies. *See* Government
agencies; *specific agencies*

U.S. passports, 259

U.S. Postal Service

forwarding addresses, 155–156

fraud complaints, 25, 36

U.S. Trustee, 73, 418

Unmarried couples, 396

domestic partnerships and civil unions, 10,
324

Unsecured creditors, 51, 423. *See also*

Unsecured debts; *specific types*

Unsecured debts, 45–46, 423

bankruptcy and, 304, 306, 308, 312, 314
basics, 6, 45

cautions about converting to secured
debts, 48, 93–94, 101

consolidation loans, 101

as high-priority debts, 46

negotiating with collection agencies, 54,
154, 159, 161–165

repayment priority, 46, 47

store charges as, 45, 51

third-party collections, 118

See also specific types

UP (Home Affordable Unemployment
Program), 133, 134

Urgency-payment requests, 165

U.S.C. (U.S. Code), 405–406, 407, 409

Used vehicles, 31

Utility bills, 45, 47, 62–63, 92. *See also*
Telephone bills

Utility companies

creditor access to records, 156

credit report access, 357

Utility deposits, 321

Utility service, 122, 306

V

Vacation pay, 327

VA loans, 139

Valuation of property, 334

VantageScore, 372–373

Vehicle insurance, 49, 67, 110, 121–122

Vehicle leases, 48, 64–65, 83

cancellation/termination, 34, 48, 61, 64–65

Vehicle levies, 297

Vehicle loans, 6, 44, 47–48, 221

cram downs, 315

credit scores and, 373

insurance and, 49, 121

negotiating with lenders, 63, 64

repayment priority, 47–48, 50

secured debt consolidation loans, 100–101

withholding payments on lemon vehicles,
30

Vehicles

credit reports and shopping for a car,
356–357, 363–364
exemptions and, 319, 331–332
lemon laws, 29–31
liens on, 118
purchase contract cancellation rights, 34
repossession, 63–64, 110–111, 113, 114
selling, 47–48, 63, 83, 84
used vehicle problems, 31
valuation, 334

See also Exempt/nonexempt property

Vehicle title loans, 62, 102–103, 104

Visitation, 251, 307

VITA (Volunteer Income Tax Assistance
Program), 92, 102

Vocational schools. *See* For-profit schools

Voluntary simplicity, 354

Volunteer Income Tax Assistance Program
(VITA), 92, 102

Volunteer service, student loan cancellations/
deferments and, 237

Voter registration records, 156

W

Wage assignments, 221, 225–226, 298, 423

Wage attachments, 118, 166, 423

alimony debts, 262

basics, 294–296, 322

child support debts, 260–261, 295

stopping/avoiding, 299–300

student loan debts, 50, 245

tax debts, 295

terminations and, 295

Wages

adjusting withholding taxes, 82–83, 121

availability to creditors, 322, 327, 328

child support withholding, 255–256, 307,
423

See also Wage assignments; Wage
attachments

Waivers of court filing fees, 271

Waivers of exemptions, 227

Waivers of statute of limitations, 279

Warranties

breaches and enforcement, 26–29, 283

“lemon” vehicles, 29–31

vehicle warranty defects, 29–30

Westlaw, 411

Wildcard exemptions, 332, 341

Withholding payments

as breach of contract, 32

child support payments, 47

credit card debts, 71

disputed debts or defective products,
27–29, 30

home mortgages, 46–47

Workouts, 140–141, 181

Writs of attachment, 116–117

Writs of execution, 260, 295–296, 297, 321

Z

“Zombie” debts, 153–154, 160–161, 190–191 ●

**NOLO**

Online Legal Forms

Nolo offers a large library of legal solutions and forms, created by Nolo's in-house legal staff. These reliable documents can be prepared in minutes.

Create a Document

- **Incorporation.** Incorporate your business in any state.
- **LLC Formations.** Gain asset protection and pass-through tax status in any state.
- **Wills.** Nolo has helped people make over 2 million wills. Is it time to make or revise yours?
- **Living Trust (avoid probate).** Plan now to save your family the cost, delays, and hassle of probate.
- **Trademark.** Protect the name of your business or product.
- **Provisional Patent.** Preserve your rights under patent law and claim "patent pending" status.

Download a Legal Form

Nolo.com has hundreds of top quality [legal forms](#) available for download—bills of sale, promissory notes, nondisclosure agreements, LLC operating agreements, corporate minutes, commercial lease and sublease, motor vehicle bill of sale, consignment agreements and many more.

Review Your Documents

Many lawyers in Nolo's consumer-friendly [lawyer directory](#) will review Nolo documents for a very reasonable fee. Check their detailed profiles at Nolo.com/lawyers.

Nolo's Bestselling Books



Credit Repair

\$24.99



How to File For Chapter 7 Bankruptcy

\$39.99



Chapter 13 Bankruptcy

Keep Your Property & Repay Debts Over Time

\$39.99



The New Bankruptcy

Will It Work For You?

\$24.99



Stand Up to the IRS

\$34.99

Every Nolo title is available in print and for download at Nolo.com.



Lawyer Directory

Find a Debt & Bankruptcy Attorney



- *Qualified lawyers*
- *In-depth profiles*
- *A pledge of respectful service*

When you want help with debt problems, you don't want just any lawyer—you want an expert in the field, who can give you up-to-the-minute advice to help you protect your loved ones. You need a lawyer who has the experience and knowledge to answer your questions about Chapter 7 and Chapter 13 bankruptcy, foreclosure, business bankruptcy, and debt workouts.

Nolo's Lawyer Directory is unique because it provides an extensive profile of every lawyer. You'll learn about not only each lawyer's education, professional history, legal specialties, credentials and fees, but also about their philosophy of practicing law and how they like to work with clients.

All lawyers listed in Nolo's directory are in good standing with their state bar association. They all pledge to work diligently and respectfully with clients—communicating regularly, providing a written agreement about how legal matters will be handled, sending clear and detailed bills and more.

www.nolo.com

The photos above are illustrative only. Any resemblance to an actual attorney is purely coincidental.

**1**

Go to [Nolo.com/newsletters](https://www.nolo.com/newsletters) to sign up for free [newsletters and discounts](#) on Nolo products.

- **Nolo Briefs.** Our monthly email newsletter with great deals and free information.
- **Nolo's Special Offer.** A monthly newsletter with the biggest Nolo discounts around.
- **BizBriefs.** Tips and discounts on Nolo products for business owners and managers.
- **Landlord's Quarterly.** Deals and free tips just for landlords and property managers, too.

2

Don't forget to check for [updates](#) at [Nolo.com](https://www.nolo.com). Under "Products," find [this book](#) and click "Legal Updates."

Let Us Hear From You

3

[Register](#) your Nolo product and give us your feedback at [Nolo.com/book-registration](https://www.nolo.com/book-registration).

- Once you've registered, you qualify for technical support if you have any trouble with a download or CD (though most folks don't).
- We'll also drop you an email when a new edition of your book is released—and we'll send you a coupon for 15% off your next Nolo.com order!

NOLO[®] and **USA TODAY**

Cutting-Edge Content, Unparalleled Expertise



The Busy Family's Guide to Money

by Sandra Block, Kathy Chu & John Waggoner • \$19.99

The Work From Home Handbook

Flex Your Time, Improve Your Life

by Diana Fitzpatrick & Stephen Fishman • \$19.99

Retire Happy

What You Can Do NOW to Guarantee a Great Retirement

by Richard Stim & Ralph Warner • \$19.99

The Essential Guide for First-Time Homeowners

Maximize Your Investment & Enjoy Your New Home

by Ilona Bray & Alayna Schroeder • \$19.99

Easy Ways to Lower Your Taxes

Simple Strategies Every Taxpayer Should Know

by Sandra Block & Stephen Fishman • \$19.99

First-Time Landlord

Your Guide to Renting Out a Single-Family Home

by Attorney Janet Portman, Marcia Stewart & Michael Molinski • \$19.99

Stopping Identity Theft

10 Easy Steps to Security

by Scott Mitic, CEO, TrustedID, Inc. • \$19.99

The Mom's Guide to Wills & Estate Planning

by Attorney Liza Hanks • \$21.99

Running a Side Business

How to Create a Second Income

by Attorneys Richard Stim & Lisa Guerin • \$21.99

Nannies and Au Pairs

Hiring In-Home Child Care

by Ilona Bray, J.D. • \$19.99

The Judge Who Hated Red Nail Polish

& Other Crazy But True Stories of Law and Lawyers

by Ilona Bray, Richard Stim & the Editors of Nolo • \$19.99

ORDER ANYTIME AT **WWW.NOLO.COM** OR CALL **800-728-3555**

Prices subject to change.

About the Authors

Robin Leonard is a coauthor of many personal finance books, including Nolo's *Credit Repair* and *How to File for Chapter 7 Bankruptcy*.

Margaret Reiter was a consumer investigator with the Los Angeles County Consumer Affairs Department for four years and worked for 20 years as a consumer prosecutor with the California Attorney General's Consumer Law Section. She has investigated or prosecuted businesses engaged in consumer fraud, including foreclosure "consultants," mortgage lenders, debt settlement companies, vocational schools, living trust mill/annuity sellers, prepaid phone card companies, and tax refund anticipation loan providers. She has drafted consumer protection legislation, advocated for stronger consumer protection before regulatory agencies, trained other prosecutors and investigators, and prepared consumer alerts and spoken to the public on Truth-in-Lending, telephone slamming and cramming, truth in phone billing, bankruptcy, and vocational schools, among other consumer topics.

